FIFTY YEARS OF INDIAN PARLIAMENT

G.C. MALHOTRA
Editor

LOK SABHA SECRETARIAT
New Delhi
2002

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IT

On 13th of May 1952, a new milestone was reached in the evolution of parliamentary democracy in India. It was on this day that representatives of the people, elected through the First General Elections in Independent India's history, met for the first time as members of the House of the People, renamed later as Lok Sabha. The Council of States, renamed later as Rajya Sabha, also met separately on the same day. Ever since, the Indian Parliament has been the friend, philosopher and guide for our countrymen, taking the nation forward through the path illumined by the vision of the Constitution of India. During these eventful five decades, our Parliament has been the voice of the people and the mirror of theirselves — articulating their concerns and reflecting their aspirations. In the process, Parliament of India has verily emerged to be the true microcosm of the nation, its people, culture and heritage.

This Volume is a commemorative publication brought out by the Lok Sabha Secretariat to mark the Golden Jubilee of Indian Parliament. The contributors to this book are eminent men and women, who have been closely associated with the institution of Parliament in some way or the other or who have helped in their own ways to shape the modern India that we are living in today. Their views, perspectives and perceptions, finding expression in the pages of this publication, are evocative of their commitment to the cause of national weal which our Parliament has ceaselessly striven to achieve. Their analyses and reasoning, evaluation and interpretation, opinion and judgment bring to the fore our many achievements in the last fifty years, and the shortcomings and imperfections in the system, as also the challenges before the polity in the years ahead. Their sage counsel and sane advice could well be the guiding spirit to policy planners and decision makers in the next fifty years. As such, this Volume is of immense value to parliamentarians, political scientists, research scholars and all other interested readers.

Price:
Rs. 1500

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Henry Moraes.

Editor
G.C. MALHOTRA
Secretary-General
Lok Sabha

LOK SABHA SECRETARIAT
New Delhi
2002

No. 9-PRIS (Pol.)/2002

First Edition, May 2002

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ISBN No. 81-200-0385-3

Price: Rs. 1500

Published under Rule 382 of the *Rules of Procedure and Conduct of Business in Lok Sabha* (Ninth Edition) and printed by Jainco Art India, New Delhi.

Sole Distributors
Metropolitan Book Co. Pvt. Ltd.,
1, Netaji Subhash Marg,
New Delhi-110 002,
India
Phones: 3271661, 3255914
Fax: 91-11-3272497
E-mail: metrobks@ndf.vsnl.net.in

FOREWORD

On 13th of May, 2002, the Indian Parliament completes fifty years of glorious existence in the service of the nation. These eventful five decades have witnessed the making of modern Indian history, in which our Parliament has played the lead role.

Today, we can take legitimate pride in the fact that India is the largest working democracy in the world. We can be equally proud that we have preserved our Constitution and the democratic system of governance against heavy odds during the last half century. The democratic form of polity, which the founding fathers of our Constitution bequeathed to us to guide the destiny of our country, is based on the sovereignty of the people, primacy as well as supremacy of the Legislature, responsibility of the Executive and independence of the Judiciary.

It is an indisputable fact that parliamentary democracy, the seeds of which were sown in the early decades of our Independence, has taken deep and firm roots in India today. The diverse sections of our society, including those belonging to the deprived and the downtrodden segments, have found their rightful place in Parliament and State Legislatures. Simultaneously, the social base of our democracy is getting broadened and deepened. These are undoubtedly significant developments and will be welcomed by all those who firmly believe that democracy works best when it is most representative.

Democracy is the pulsating passion of our country. Our Parliament has not only been a strong and creative force in the challenging task of nation building but is also committed to planned economic development, the peaceful transformation of an old social order and the uplifting of the poor from conditions of social and economic under-development. What we are attempting in India is a creative application of meaningful democracy to the radically diverse problems before the country.

While looking back at the functioning of parliamentary democracy in India during the last fifty years, we need to have a balanced approach towards the precepts and practice. Though we should not hesitate to project the enormous contribution our democracy has made to the making of modern India, we should also honestly introspect our shortcomings and take appropriate remedial actions. It is this sense of balance that will enable us to both consolidate our strengths and address our imperfections.

The successful conduct of periodic elections to the Lok Sabha, the State Legislatures and other democratic bodies and the active and energetic participation of the people in the electoral process amply demonstrate their deep faith and trust in the system. The fact that one-sixth of the human race lives in a country having a parliamentary form of government is in itself a great accomplishment. It is my firm conviction that the democratic spirit of our people and the collective wisdom and maturity that they have shown while overcoming many crises in the past will enable us to take on the multifarious political, social and economic challenges that stare at us. The innate democratic faith of the people of India is indeed our strength.

The Lok Sabha Secretariat is bringing out this publication to mark the Fiftieth Anniversary of the Parliament of India. This Volume contains contributions of a wide-ranging nature on the working of the Parliament, the Constitution, need for electoral reforms, ethics in public life, etc. Coming as they do from outstanding personalities of the country with rich and varied experience in our national life, the contributions delineate the problem areas as well, which we should confront unitedly in the new millennium. The issues and the perspectives that they place before us would enable us to look at our national endeavours in a new light.

I hope and trust that the Volume, brought out under the able guidance of Shri G.C. Malhotra, Secretary-General, Lok Sabha, will be found useful and informative by all well-wishers of democracy.

New Delhi,
April 2002

P.M. Sayeed,
Deputy Speaker,
Lok Sabha

PREFACE

13th May, 2002 marks the Fiftieth Anniversary of the First Sitting of the two Houses of Indian Parliament. It is undoubtedly a milestone in the history of our parliamentary democracy.

Parliament as the national Legislature and repository of the constituent power of the Union occupies a pivotal position in our democratic polity. It is the corner-stone on which the Indian polity majestically stands, drawing admiration from many quarters and providing inspiration to all those who cherish democratic ideals. The achievements of our Parliament during the last five decades in the social, political and economic spheres have been quite noteworthy. It has come to occupy a pre-eminent position in the hearts and minds of our people. Needless to say, its position of primacy is assured in the political set-up of our country, as it is resilient enough to adapt itself to the changing needs of the time and fulfil its role as an effective instrument of the socio-economic transformation of the country.

Parliamentary democracy in India has faced various challenges successfully. Our Parliament is playing a crucial role in promoting the lofty ideals of our Constitution, namely participative democracy, social and religious pluralism, social justice and growing opportunities for the citizens to partake of the nation's progress in different fields—social, economic, scientific, technological, etc.

Keeping in mind the historic significance of the Fiftieth Anniversary of the Parliament of India, it was felt that a Commemorative Volume containing contributions of a wide ranging nature from high dignitaries, distinguished parliamentarians and a cross-section of eminent people from various walks of life may be brought out. It is a matter of gratification for us that the response has been well beyond our expectations. The inspiration and guidance for bringing out this publication was provided by the Late Hon'ble Speaker, Shri G.M.C. Balayogi. We are deeply indebted to him for his valuable guidance and keen interest in bringing out this Volume and we pay our respectful tribute to the memory of this outstanding son of India.

We are deeply beholden to the Hon'ble President of India, Shri K.R. Narayanan, the Hon'ble Vice-President of India, Shri Krishan Kant and the Hon'ble Prime Minister of India, Shri Atal Bihari Vajpayee for acceding to our request to contribute articles for this Volume. This has undoubtedly enhanced and enriched the value of the publication.

We are grateful to the Hon'ble Speaker, Lok Sabha, Shri Manohar Joshi for his invaluable Introduction to this commemorative publication.

We are greatly indebted to the Hon'ble Deputy Speaker, Lok Sabha, Shri P.M. Sayeed for his insightful Foreword as well as valuable contribution to and active interest in bringing out this publication.

We are grateful to all our other scholarly contributors, many of whom have been closely associated with the working of Parliament and have played a significant role in shaping the destiny of our country. The contributions in the Volume cover a wide range of subjects dealing with different facets of the working of the Constitution, the Parliament and the State Legislatures, etc. Containing as it does contributions from eminent persons of diverse persuasions and from various fields, the Volume provides valuable insights into the operation of the democratic processes and institutions in the country during the last five decades. Needless to say, these scholarly contributions on parliamentary democracy have made this Volume a mine of information on various aspects of the functioning of parliamentary democracy. We would, however, like to emphasize that the views expressed in various articles are those of the individual authors and the Lok Sabha Secretariat does not assume any responsibility either for the opinions expressed by the authors or the facts cited by them.

I must also express my deep appreciation for the dedicated endeavours made by Sarvashri John Joseph, Additional Secretary; M. Rajagopalan Nair, Joint Secretary; R.C. Ahuja, Director; K. Vijayakrishnan, Joint Director; and K.B. Tewari, Deputy Director; Smt. Manju Sharma, Assistant Director; and Smt. Musarrat Naushad and Smt. Sagarika Dash, Research Assistants in bringing out this Volume.

I would also like to place on record my appreciation of the cooperation extended by the officers in the Computer Division, Reference Wing, Parliamentary Museum and Archives and Editorial and Translation Service of the Lok Sabha Secretariat in the completion of this work.

My thanks are also due to Shri Radhey Shyam, Controller of Printing and Publications, Lok Sabha Secretariat and Shri Sudhir Kumar Jain of Jainco Art India, New Delhi for ensuring quality production of the publication and bringing it out in time and Shri B.V. Gupta and Shri Vivek Gupta of M/s. Metropolitan Book Company Pvt. Ltd., New Delhi who are the sole distributors of this publication.

I hope this publication will be found useful and commend it to a wide readership among the parliamentarians, political thinkers and the general public who are concerned with the history and growth of parliamentary institutions in the country.

New Delhi,
May 2002

G.C. Malhotra,
Secretary-General,
Lok Sabha

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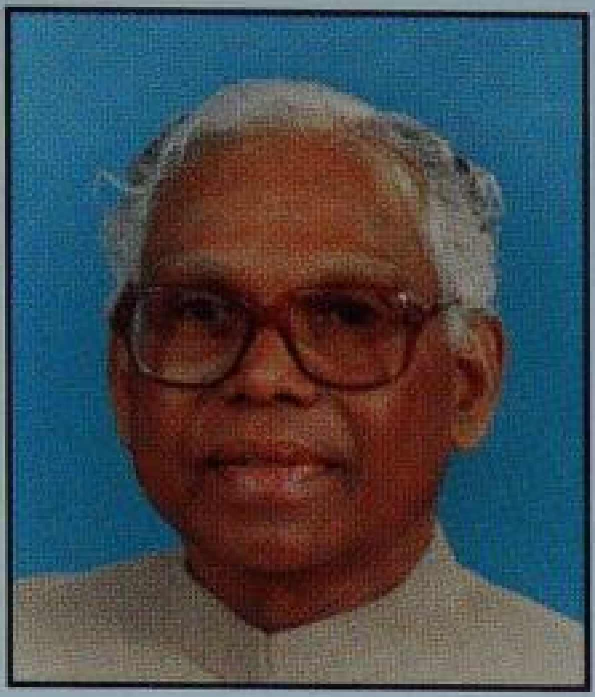

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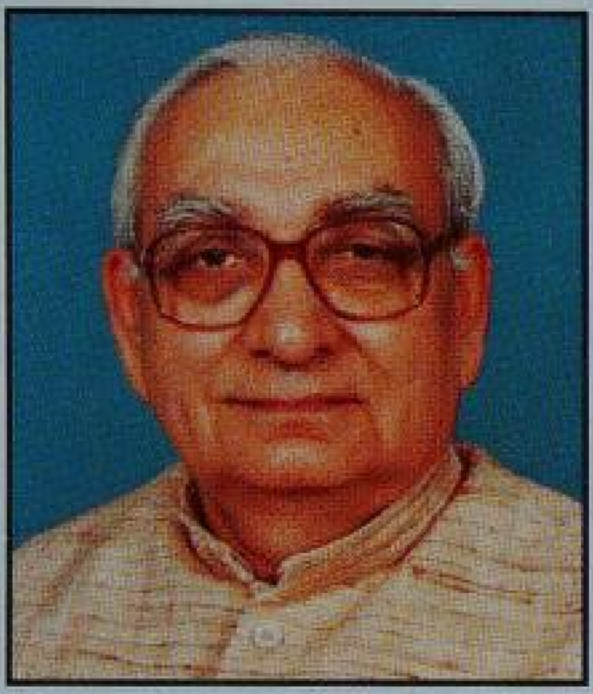

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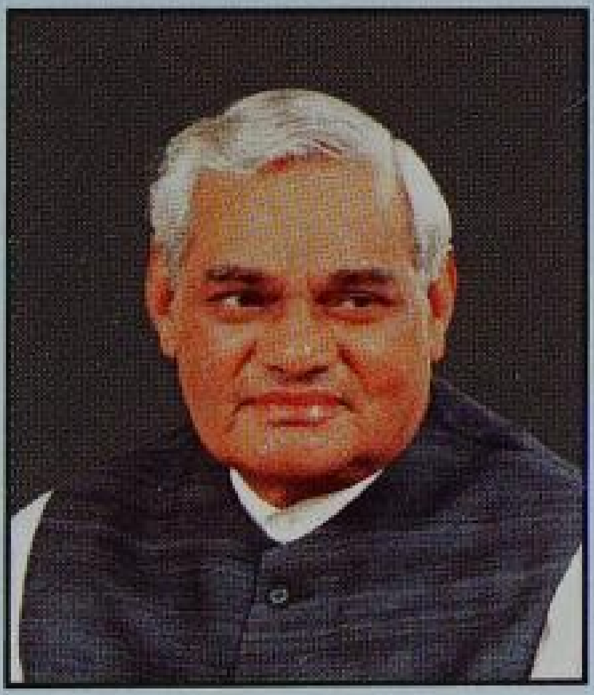

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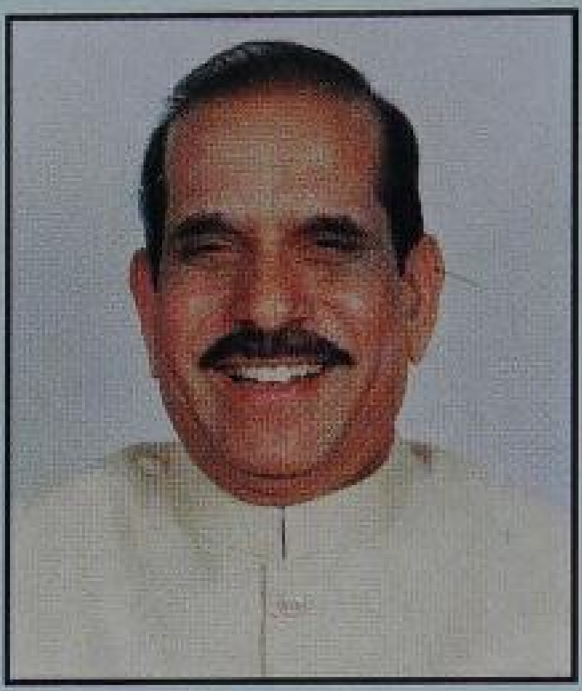

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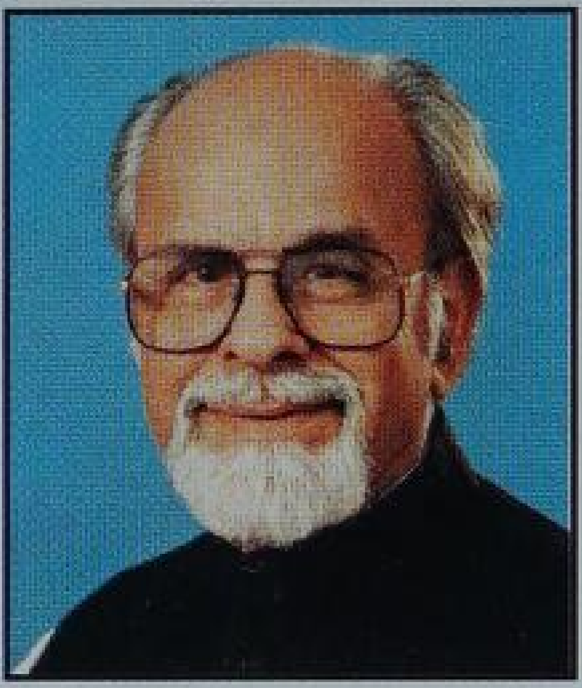

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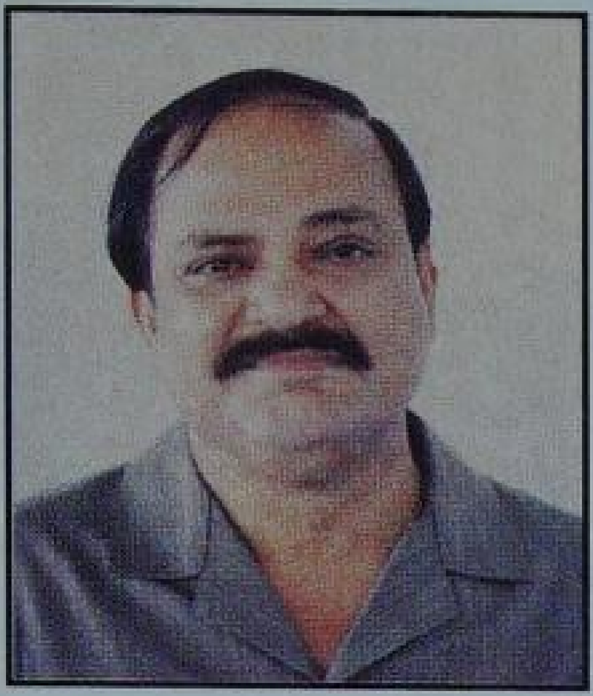

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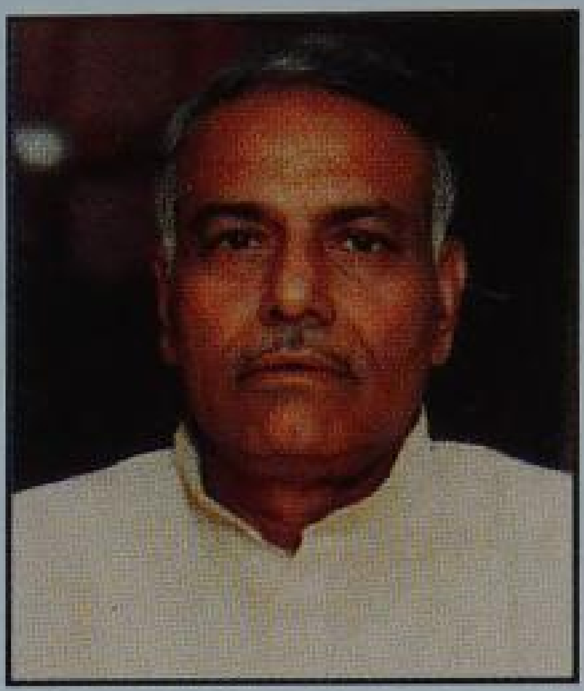

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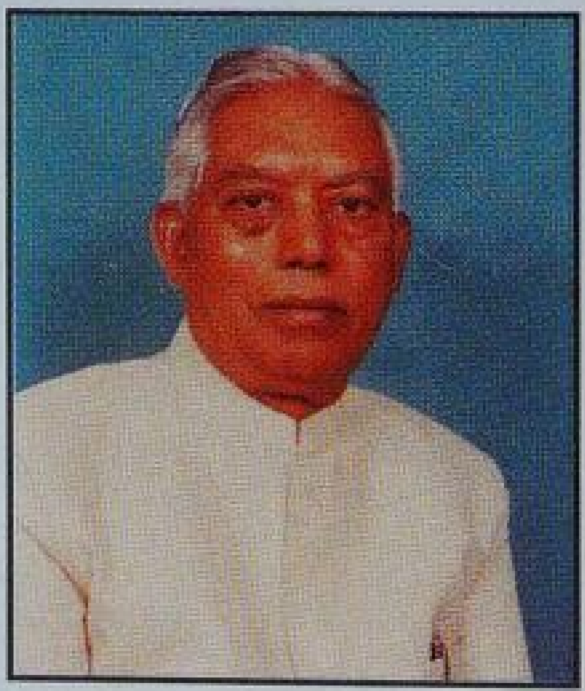

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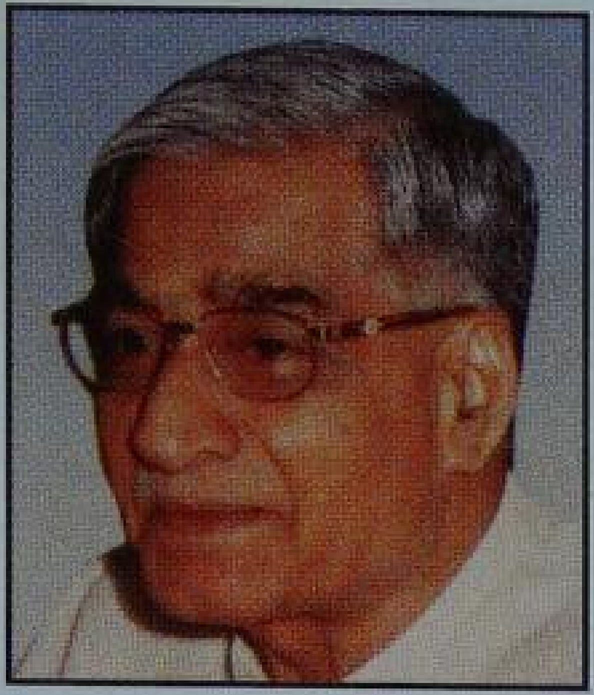

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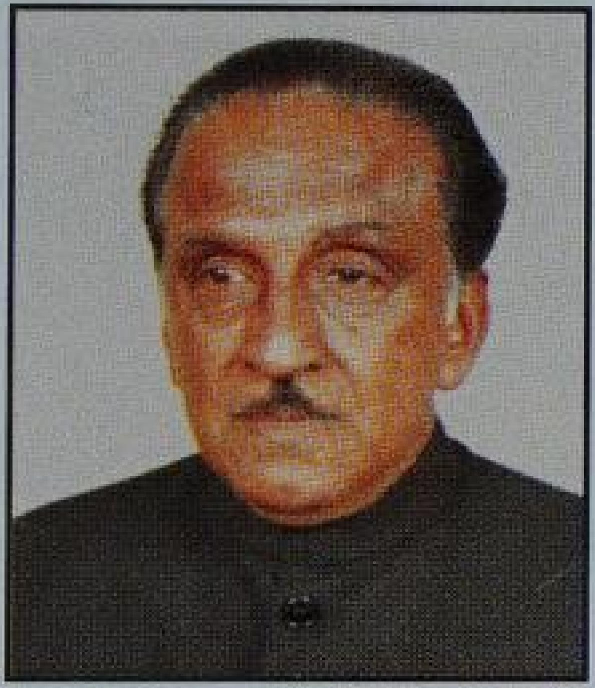

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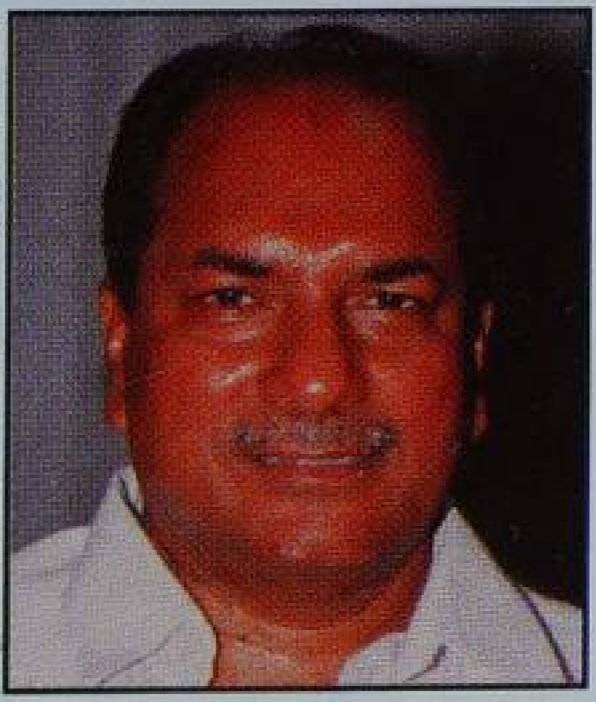

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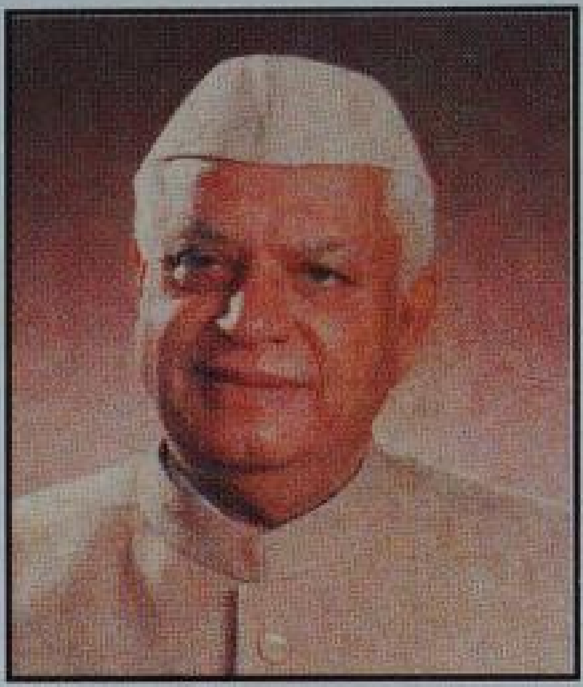

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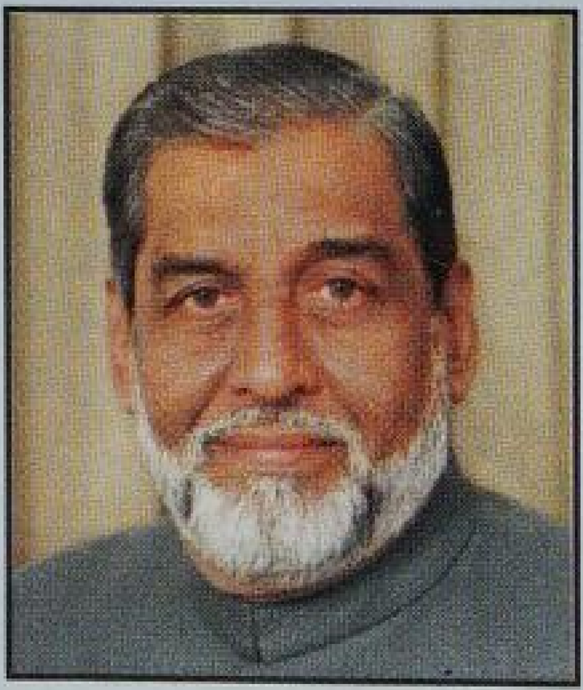

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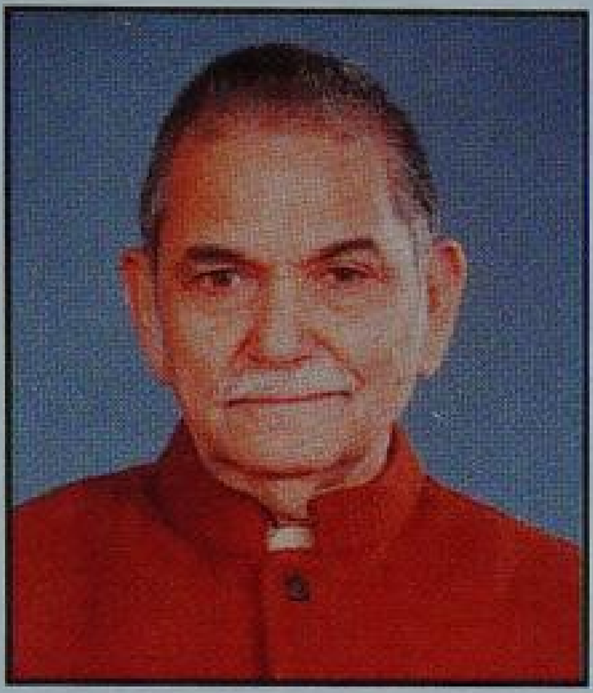

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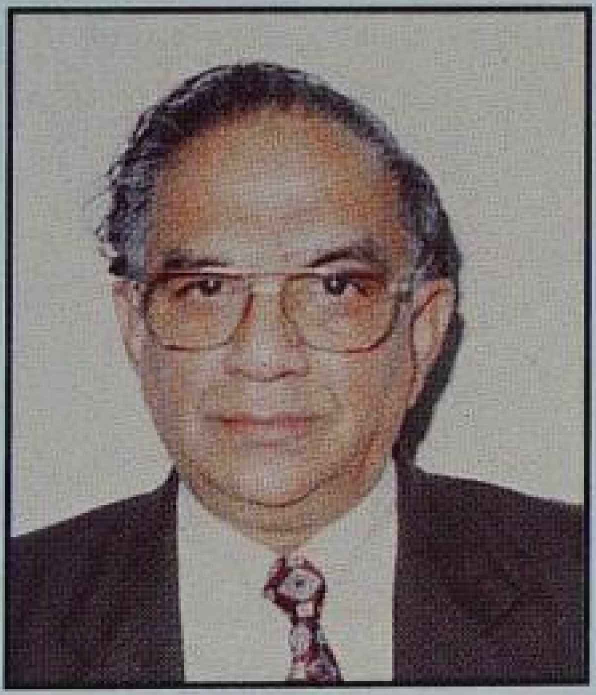

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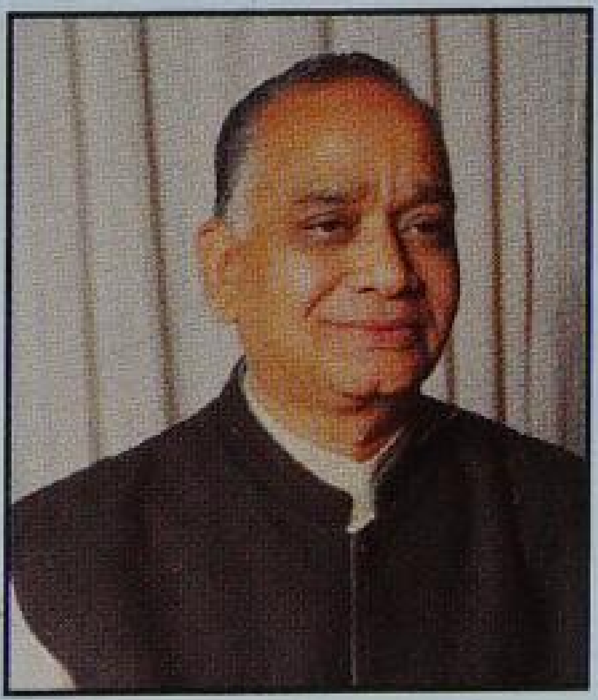

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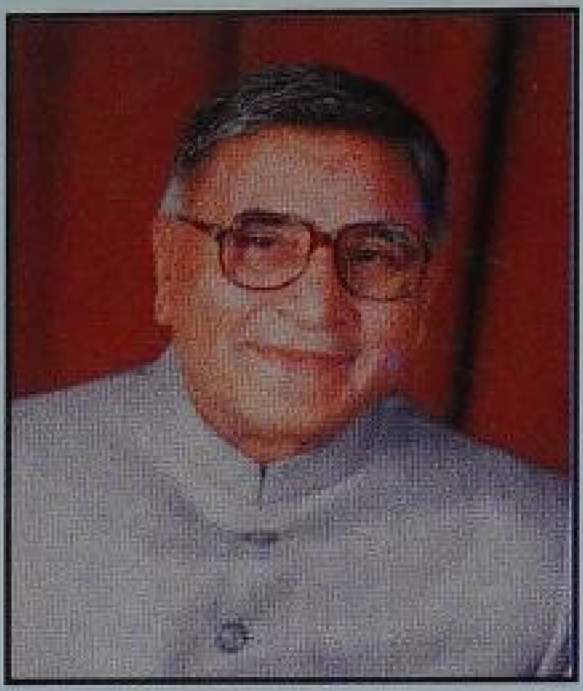

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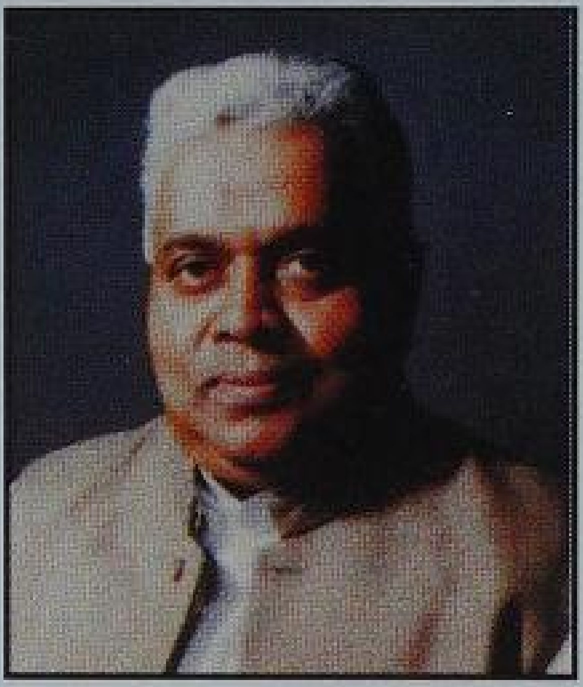

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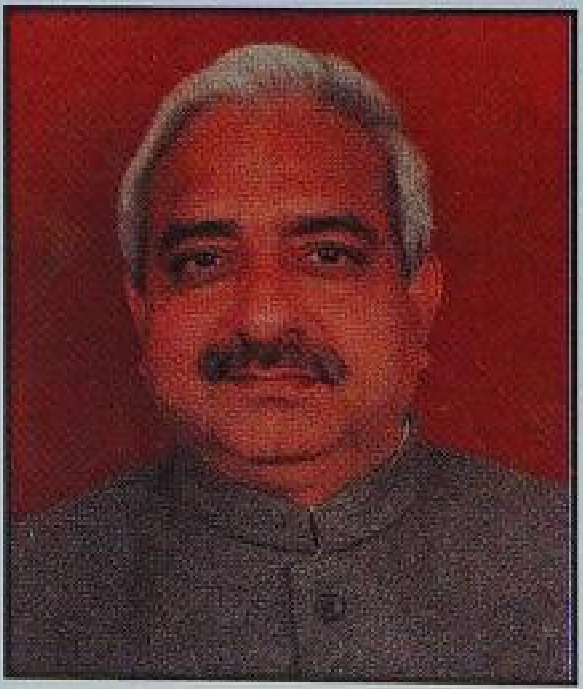

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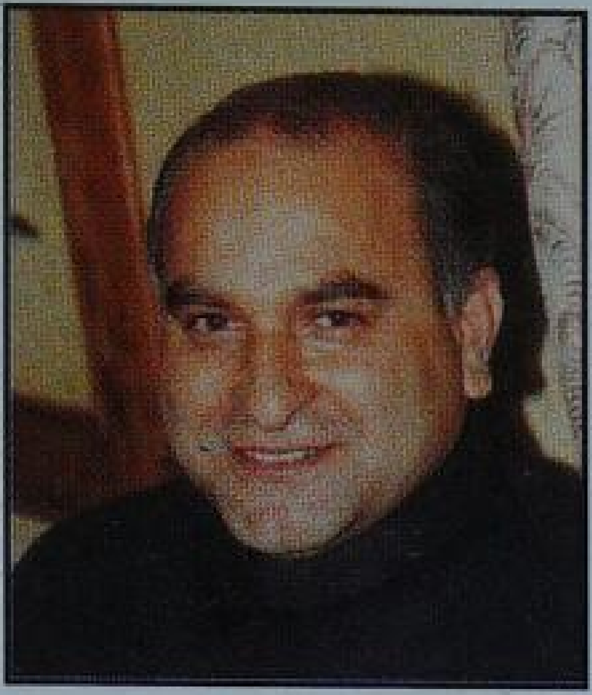

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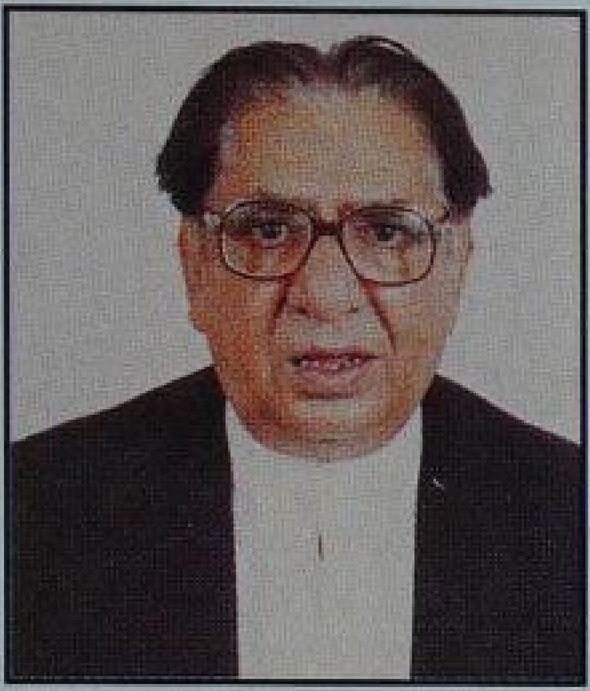

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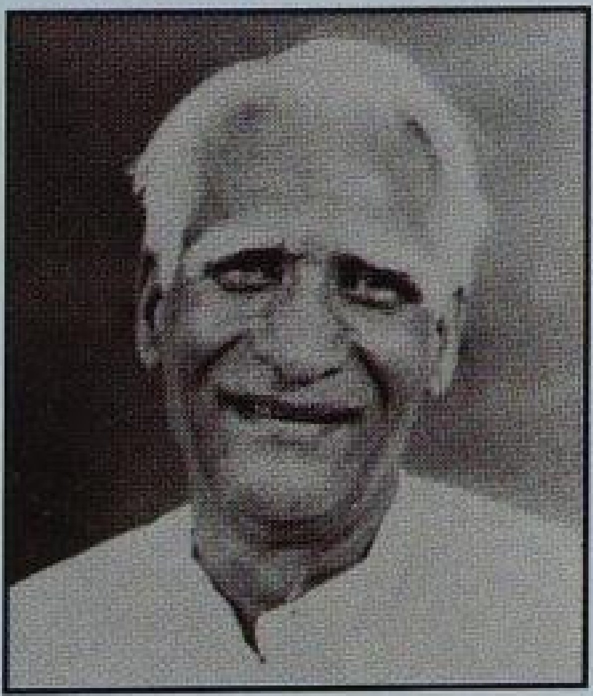
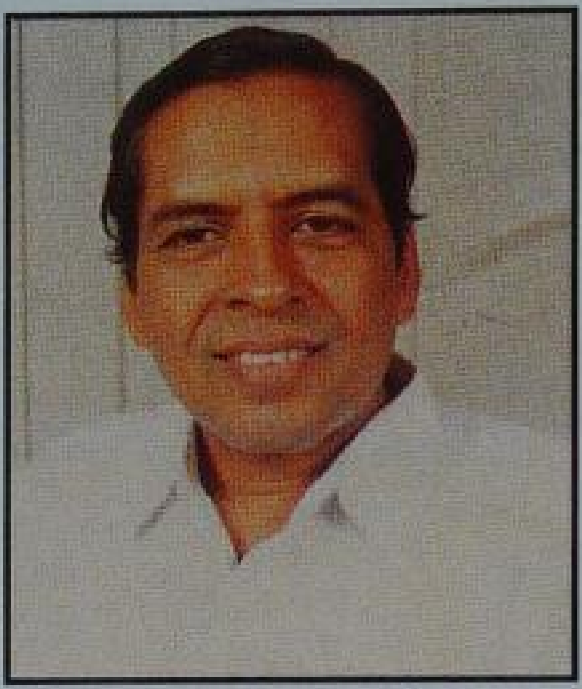
Speaker, Kerala Legislative Assembly
and former Lt. Governor of
Andaman and Nicobar Islands



Shri Shriniwas Tiwari
Speaker, Madhya Pradesh Legislative Assembly

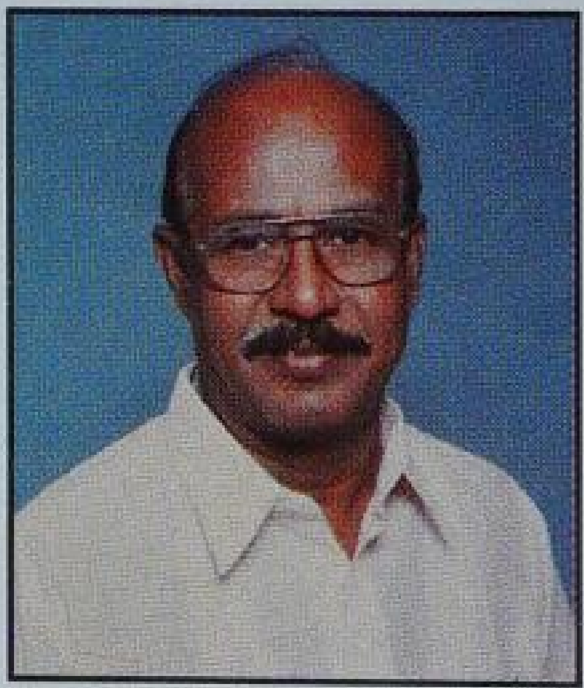


Shri Arun Gujarathi
Speaker, Maharashtra Legislative Assembly

Dr. S. Dhananjoy
Speaker, Manipur Legislative Assembly

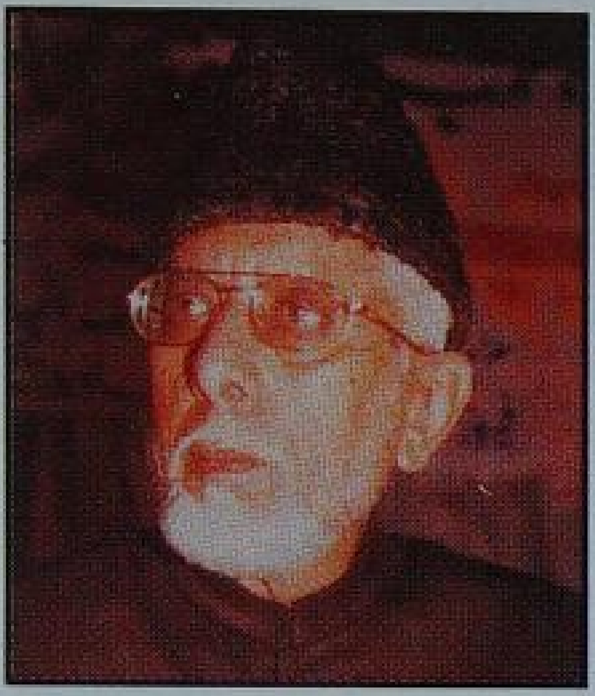
Shri E.D. Marak
Speaker, Meghalaya Legislative Assembly

Smt. Kalawati Subba
Speaker, Sikkim Legislative Assembly



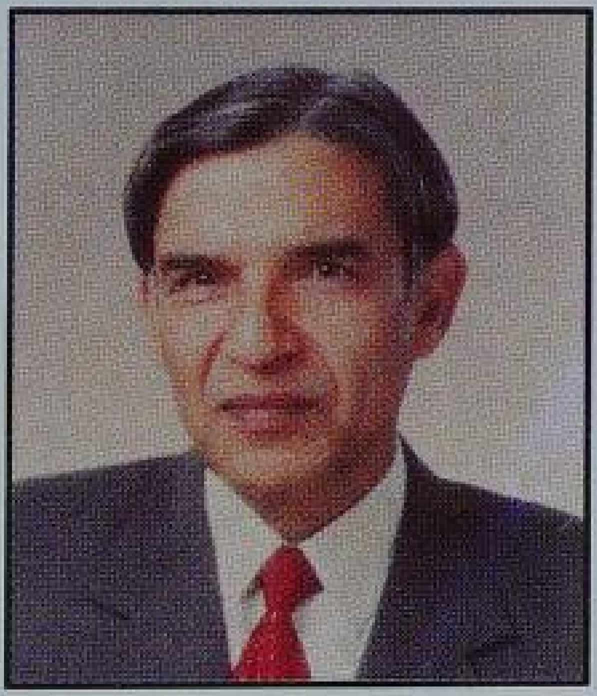
Dr. K. Kalimuthu
Speaker, Tamil Nadu Legislative Assembly

Ch. Prem Singh
Speaker, Delhi Legislative Assembly



Shri G.M. Banatwalla
Member of Parliament

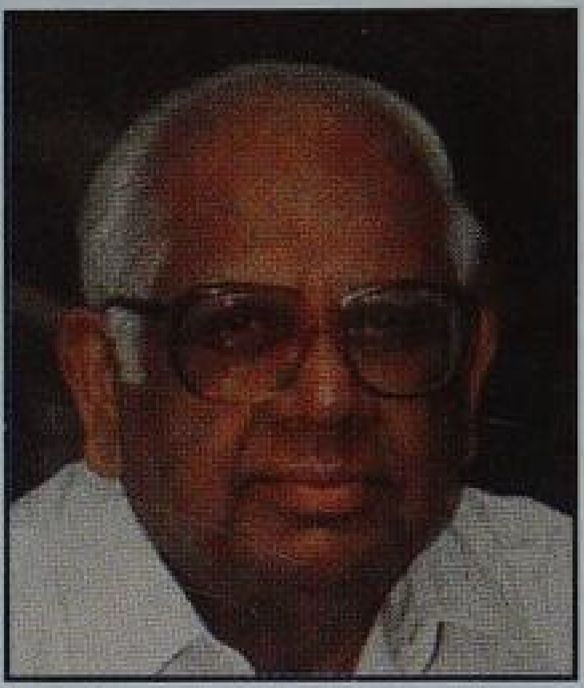
Kum. Mamata Banerjee
Member of Parliament
and former Union Minister



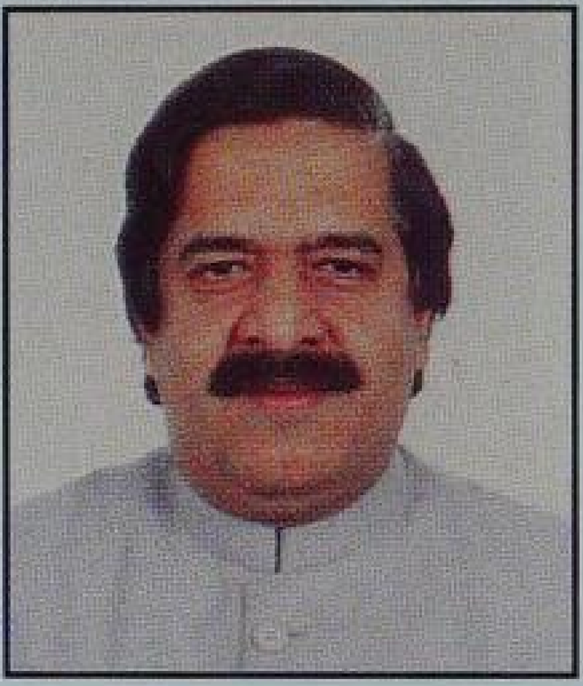
Shri Pawan Kumar Bansal
Member of Parliament

Dr. H.R. Bhardwaj
Member of Parliament
and former Union Minister of State
(Independent Charge)

Prof. (Smt.) Krishna Bose
Member of Parliament



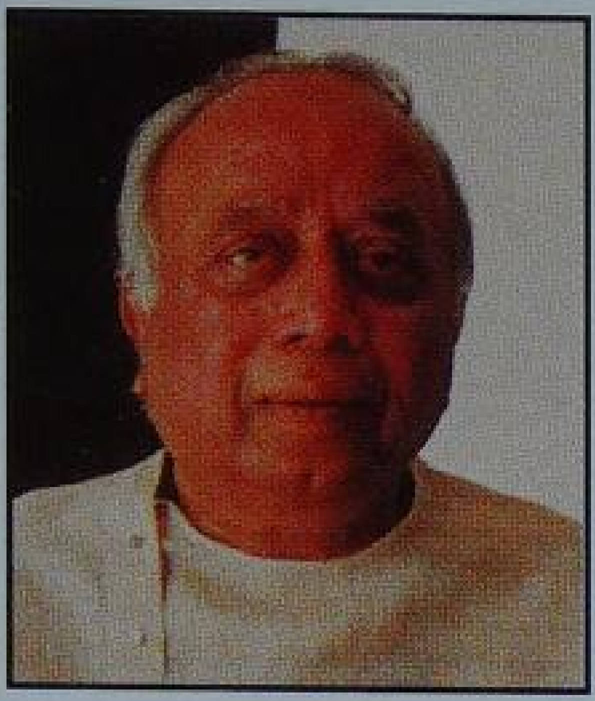
Shri Somnath Chatterjee
Member of Parliament



Shri Ramesh Chennithala
Member of Parliament

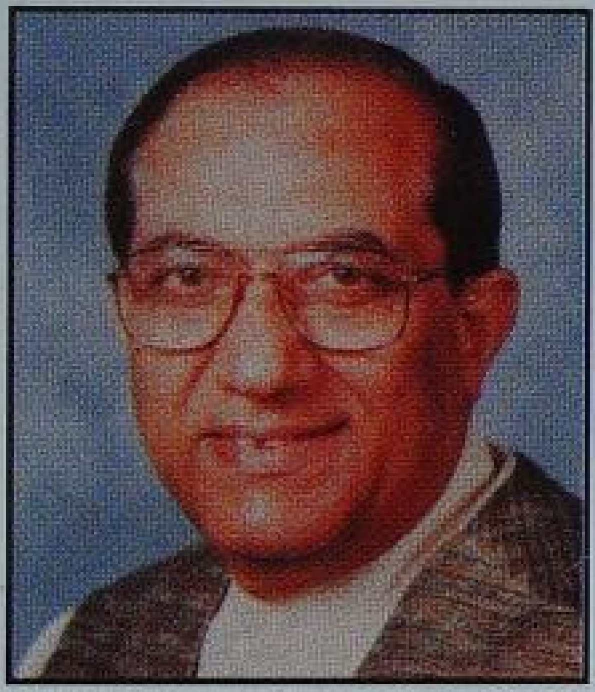
Dr. Biplab Dasgupta
Member of Parliament

Shri Anant Gangaram Geete
Member of Parliament

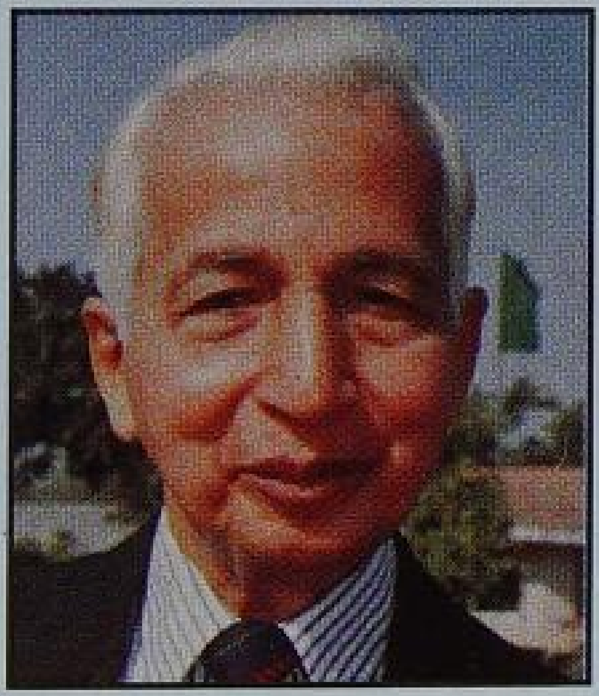


Shri R.P. Goenka
Member of Parliament

Smt. Sarla Maheswari
Member of Parliament



Prof. Vijay Kumar Malhotra
Member of Parliament



Justice Ranganath Misra
Member of Parliament
and former Chief Justice of India

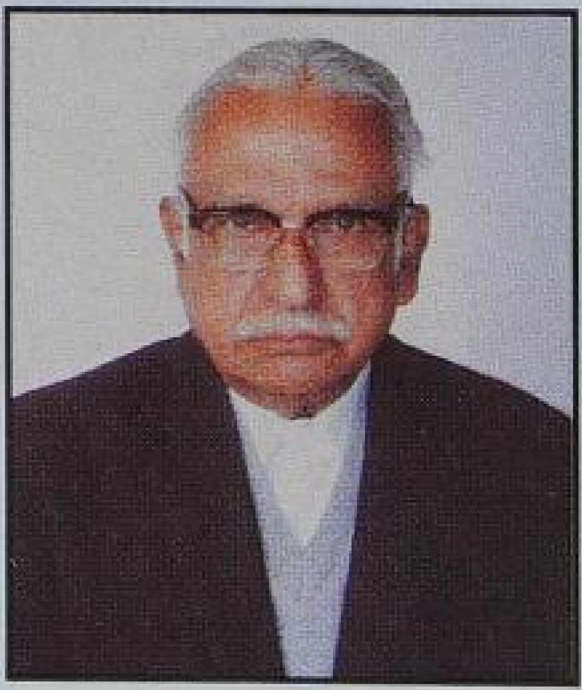
Shri Pranab Mukherjee
Member of Parliament
and former Union Minister

Shri Vilas Muttemwar
Member of Parliament

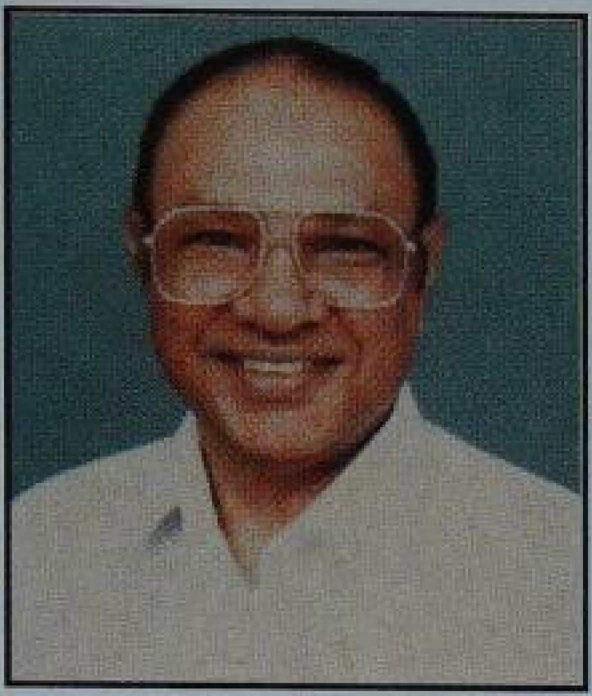
Shri Fali S. Nariman
Member of Parliament

Shri Ajit Kumar Panja
Member of Parliament
and former Union Minister of State

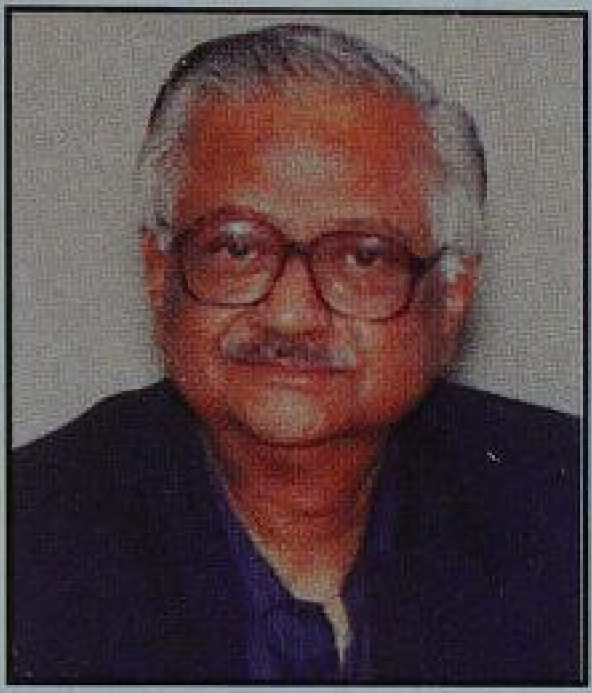
Shri Sharad Pawar
Member of Parliament,
former Union Minister and
former Chief Minister of Maharashtra



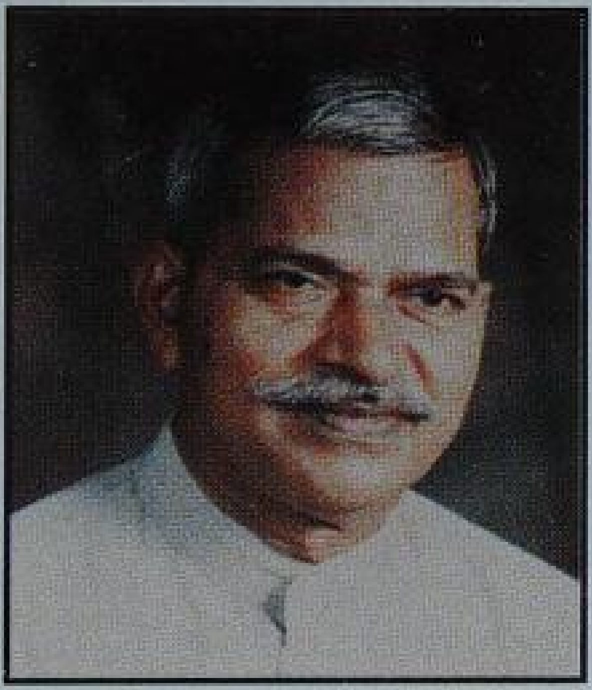
Shri Varkala Radhakrishnan
Member of Parliament
and former Speaker, Kerala Legislative Assembly



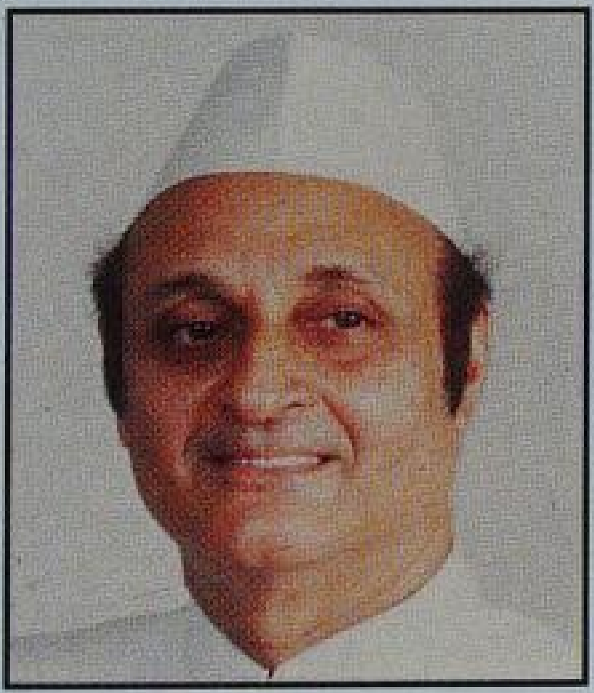
Dr. B.B. Ramaiah
Member of Parliament



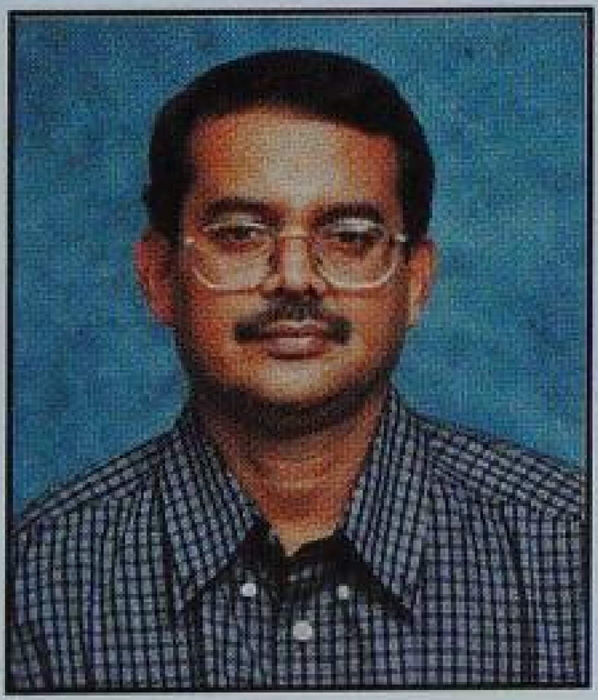
Dr. Raja Ramanna
Member of Parliament



Shri Anadi Charan Sahu
Member of Parliament

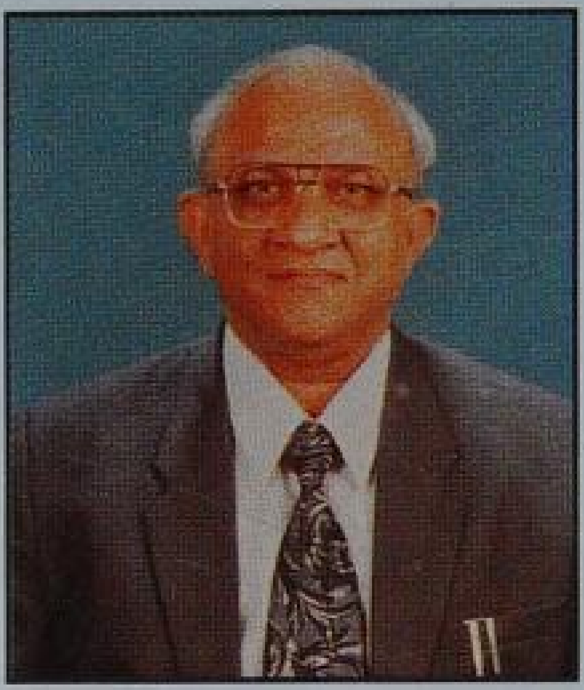


Dr. Karan Singh
Member of Parliament,
former Union Minister
and former Governor

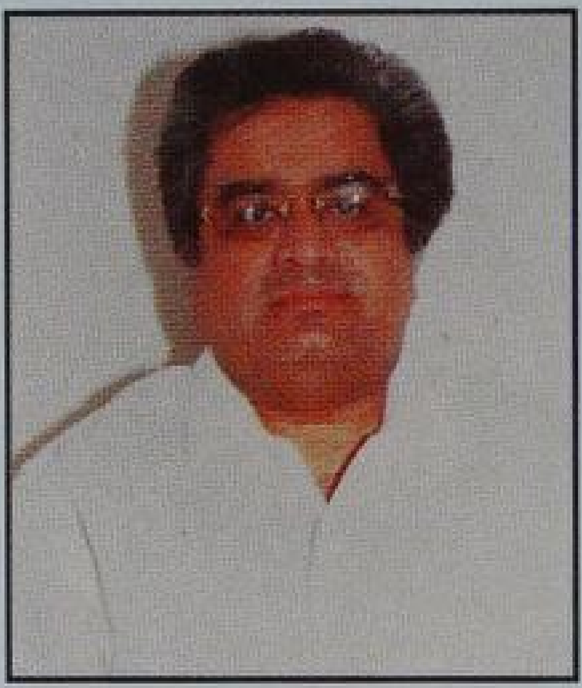


Shri M.A. Kharabela Swain
Member of Parliament

Shri R.C. Tripathi
Secretary-General, Rajya Sabha

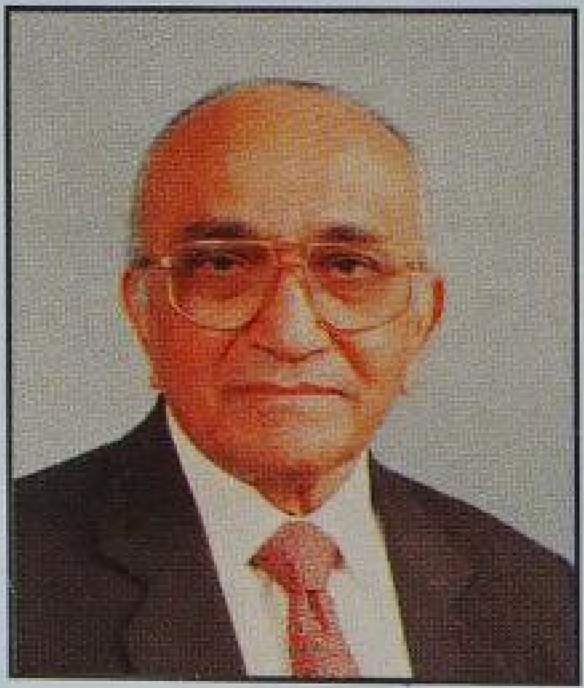


Shri G.C. Malhotra
Secretary-General, Lok Sabha

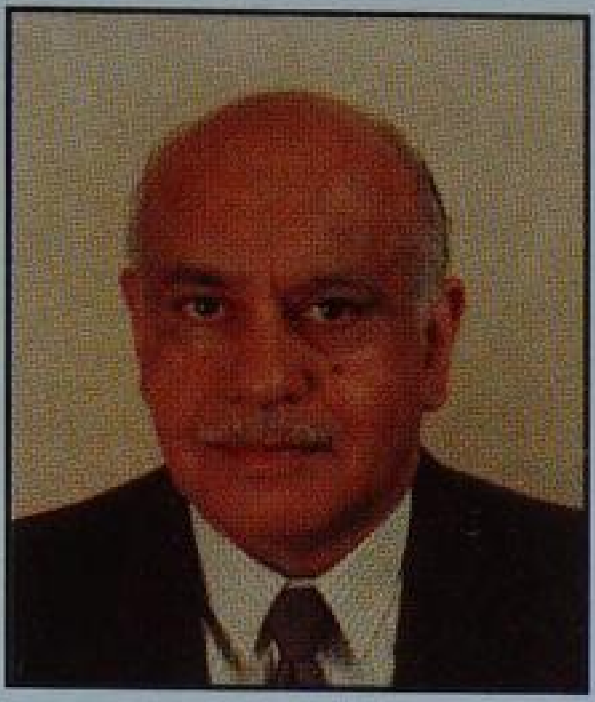


Shri Harish N. Salve
Solicitor General of India

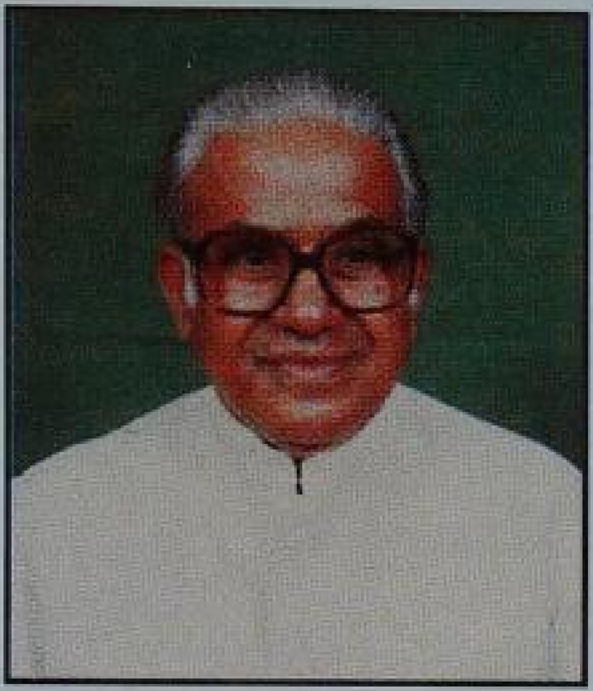
Dr. Subhash C. Jain
Secretary, Legislative Department,
Ministry of Law, Justice and Company Affairs,
Government of India



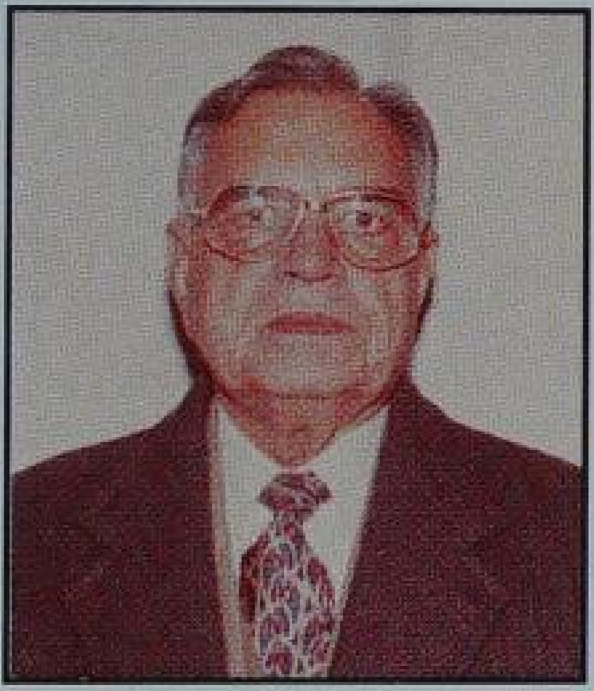
Justice P.N. Bhagwati
Chairman, United Nations Human Rights Committee
and former Chief Justice of India



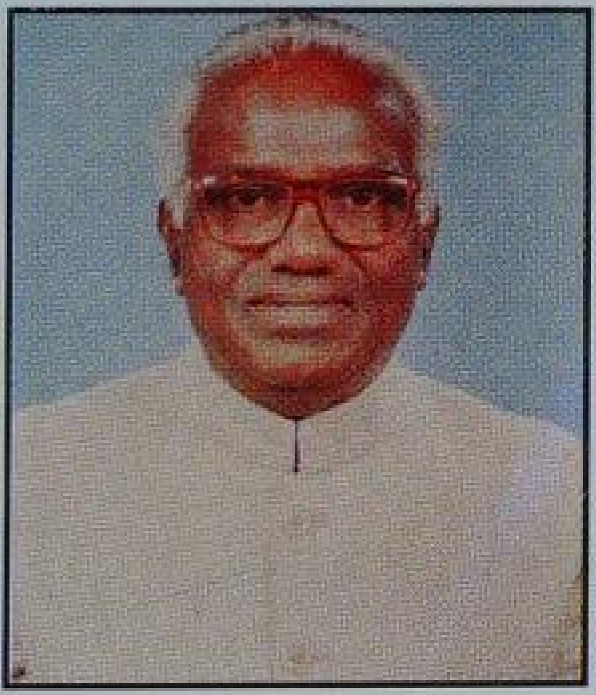
Dr. Justice A.S. Anand
Former Chief Justice of India



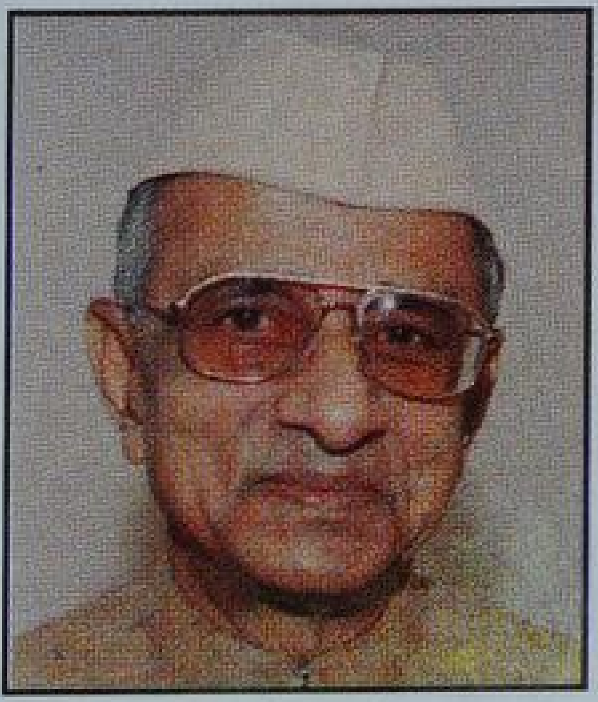
Shri Bali Ram Bhagat
Former Speaker, Lok Sabha,
former Union Minister
and former Governor of Himachal Pradesh
and Rajasthan



Dr. Bal Ram Jakhar
Former Speaker, Lok Sabha
and former Union Minister

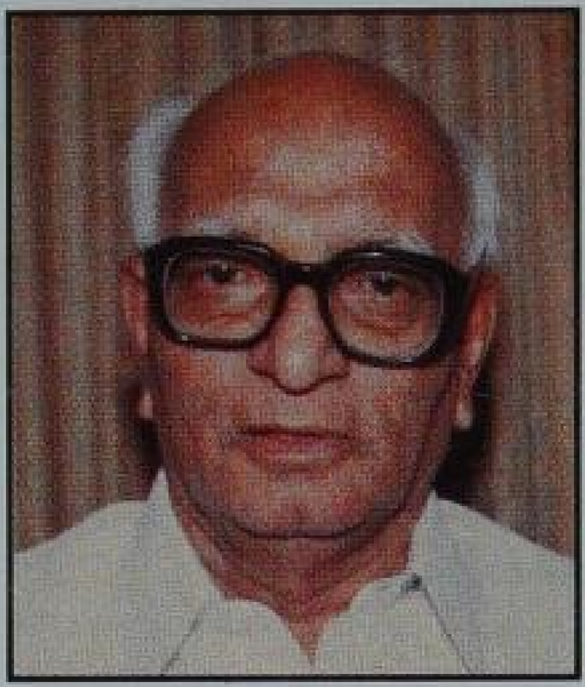


Shri P. Shiv Shanker
Former Union Minister
and former Governor of Kerala and Sikkim



Dr. Bhishma Narain Singh
Former Union Minister
and former Governor of Assam, Meghalaya,
Tamil Nadu, Sikkim, Andaman and
Nicobar Islands and Pondicherry

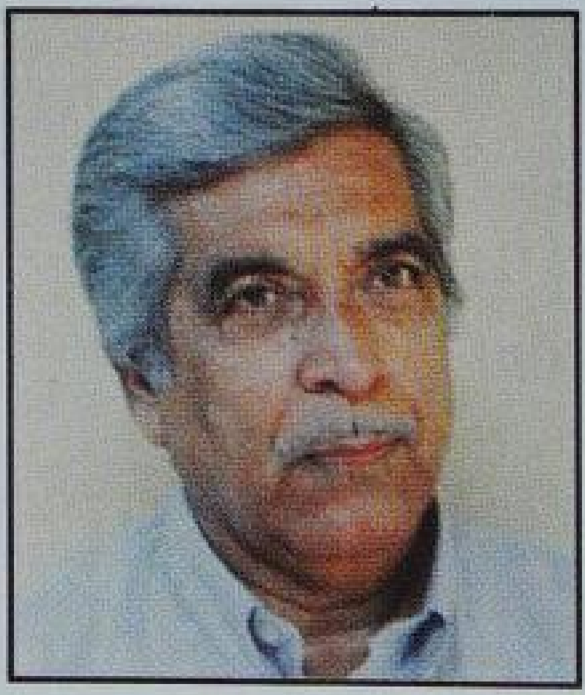
Shri Rajnath Singh
Former Union Minister
and former Chief Minister of Uttar Pradesh



Prof. Madhu Dandavate
Former Union Minister

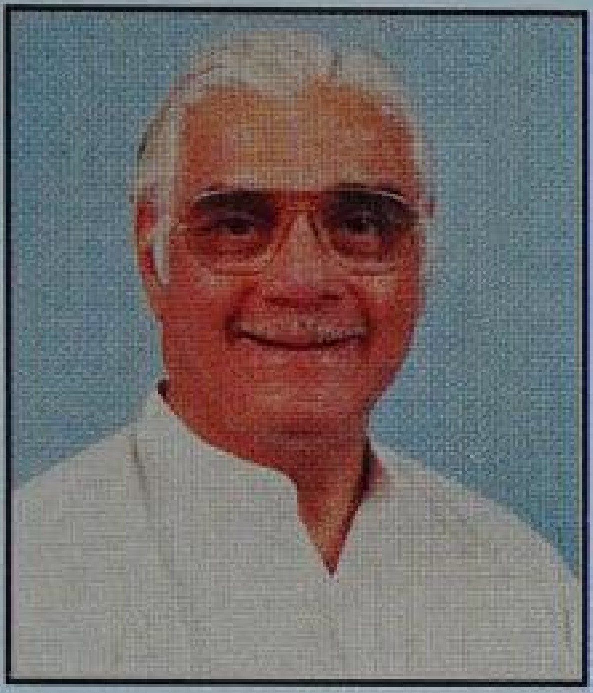
Shri Vasant Sathe
Former Union Minister

Shri P. Upendra
Former Union Minister



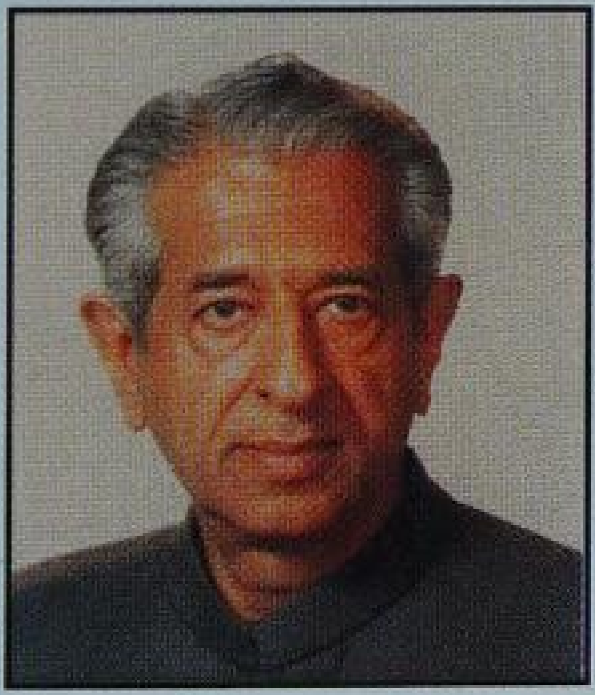
Prof. Y.K. Alagh
Vice-Chairman & Prof. Emeritus
Sardar Patel Institute of Economic &
Social Research, Ahmedabad and
former Union Minister of State
(Independent Charge)

Shri S. Charnjit Singh Atwal
Former Speaker, Punjab Vidhan Sabha

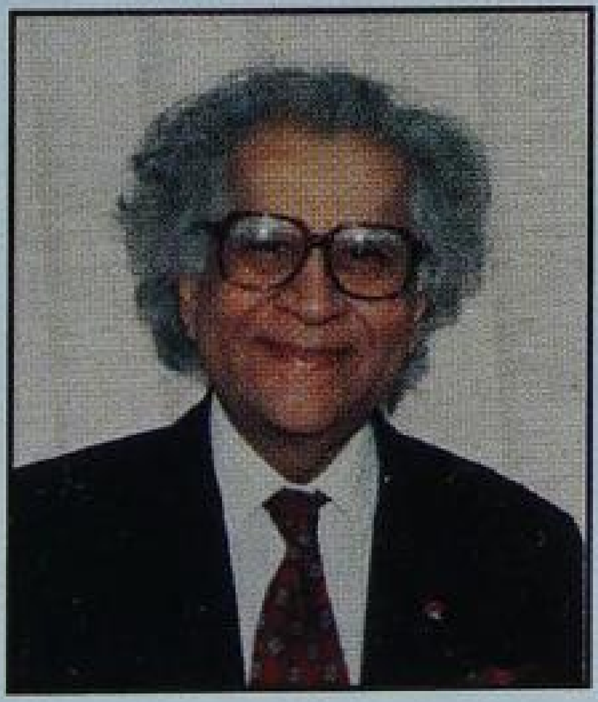


Shri Murlidhar C. Bhandare
Former Member of Parliament

Shri Inder Jit
Former Member of Parliament
Managing Director and Editor of India News & Feature Alliance

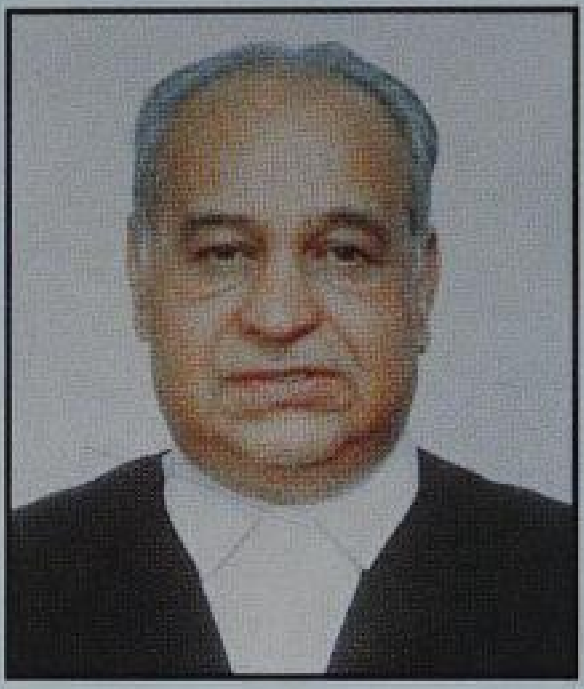


Prof. M.L. Sondhi
Former Member of Parliament



Dr. Abid Hussain
Member, National Commission to Review the Working of the Constitution

Dr. V. Kurien
Chairman,
Institute of Rural Management, Anand



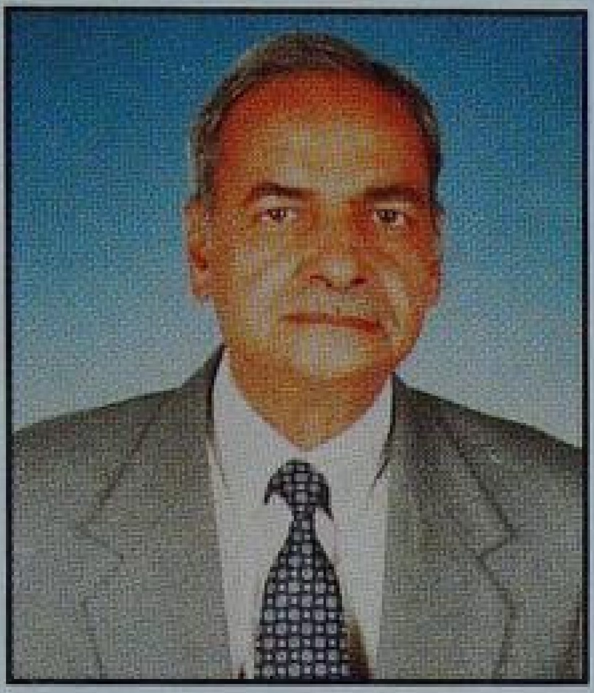
Justice M. Rama Jois
Former Chief Justice,
Punjab and Haryana High Court

Shri Shashi Tharoor
Interim Head,
Department of Public Information,
United Nations Headquarters
New York

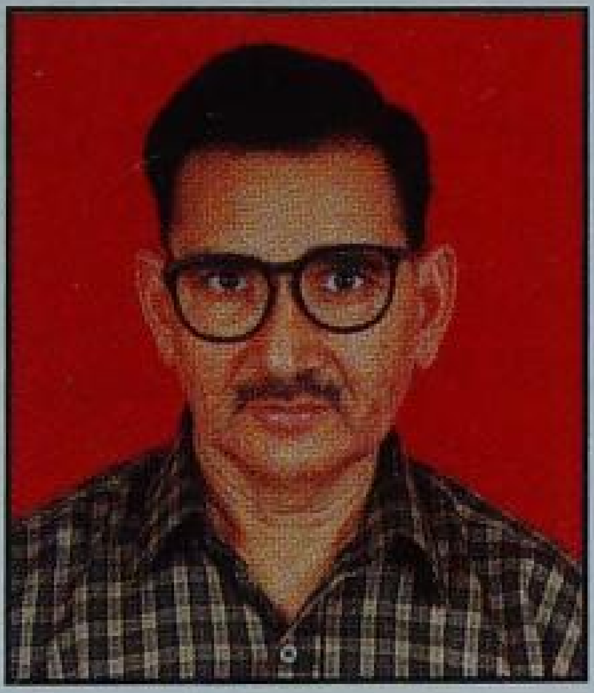
Shri Prem Shankar Jha
Author, columnist and former Editor,
Hindustan Times *(New Delhi)*

Shri A. Surya Prakash
Author and columnist

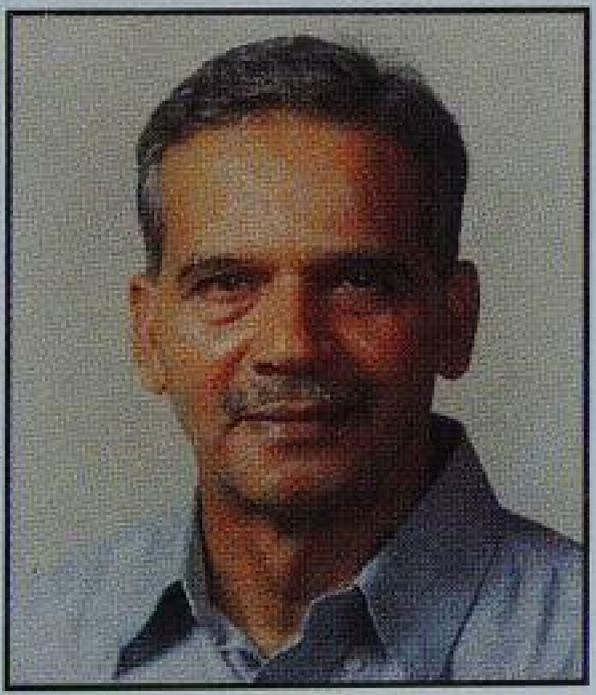
Dr. I.P. Massey
Formerly Member, State Human Rights Commission,
Himachal Pradesh
and Fellow, Indian Institute of Advanced Study



Dr. B.P. Mathur
Former Deputy C&AG and
former Chairman, Audit Board



Prof. S.N. Mishra
Professor of Rural Studies
Indian Institute of Public Administration, New Delhi



Dr. R.K. Tiwari
Professor of Public Administration
Indian Institute of Public Administration, New Delhi

Dr. Shyamlha Pappu
Senior Advocate, Supreme Court of India

INTRODUCTION

FIFTY YEARS OF LOK SABHA

Manohar Joshi

Introduction

The Parliament of India completes fifty years of its eventful existence this year. The completion of fifty years in the life of an institution is a significant event which deserves to be celebrated appropriately. It is also an occasion that calls for contemplation of what we have accomplished and what goals we have to reach in the coming years. This kind of an assessment is necessary as it instills in us a sense of pride about our achievements and inspires us with a spirit of determination and motivation to carry on with the mission we set for ourselves. It is in this spirit that we have to see the past fifty years of our Parliament's existence in its year of the Golden Jubilee.

Our Democratic Evolution

A full-fledged parliamentary system of Government with a modern institutional framework was established in the country with the coming into force of the Republican Constitution in 1950. Our journey as the world's largest parliamentary democracy began in right earnest with the constitution of the First Lok Sabha in 1952 following the first ever General Elections based on the principle of universal adult franchise. The House met for the first time on 13 May 1952. Ever since, our Parliament has functioned as the supreme legislative institution of the country, guiding and leading the nation on the path of socio-economic welfare of the people.

Constitutional Provisions

Under the scheme of our Constitution, the three main organs of the State are the Legislature, the Executive and the Judiciary. The Constitution defines their powers, delimits their jurisdictions, demarcates their responsibilities and regulates their relationship with one another and the people. The relationship between the Executive and the Legislature is one that is most intimate and ideally does not admit of any antagonism. The two are not competing centres of power. Rather, they are inseparable partners in the business of the Government. The Judiciary, on the other hand, is an independent authority empowered by the Constitution to consider the legality and constitutionality of the orders of the Executive and the laws enacted by the Legislature. However, our Constitution does not permit of the concept of judicial supremacy. The Constitution envisages separation of powers among the three organs of the State and each is expected to function within its limits and what is envisaged is a harmonious relationship among the three organs of the State.

Constitution : A Vehicle of Social Transformation

The adaptability of the Constitution to the ever changing native realities has effectively made it a vehicle of social change, the process being substantially facilitated by our Parliament. Till date, as many as 85 Constitutional Amendments have been enacted which prove that our Parliament is keeping pace with the needs of the time. The enactment of the Abolition of Privy Purses [the Constitution (Twenty-sixth Amendment) Act, 1971]; inclusion of the Kerala Land Reforms Act, 1963 in the Ninth Schedule to the Constitution [the Constitution (Twenty-ninth Amendment) Act, 1972]; providing *inter alia* for insertion of the words 'Socialist Secular' in the Preamble to the Constitution and insertion of Fundamental Duties [the Constitution (Forty-second Amendment) Act, 1976]; inclusion of Land Reforms Acts in the Ninth Schedule to the Constitution [the Constitution (Forty-seventh Amendment) Act, 1984]; providing constitutional sanctity to the Tripura Tribal Areas Autonomous District Council [the Constitution (Forty-ninth Amendment) Act, 1984]; lowering of the voting age from 21 years to 18 years [the Constitution (Sixty-first Amendment) Act, 1988]; provision for setting up of the National Commission for SCs and STs [the Constitution (Sixty-fifth Amendment) Act, 1990]; devolution of powers to the panchayats and local bodies and making provision for reservation of not less than one-third of the total seats in panchayats and urban and local bodies for women [the Constitution (Seventy-third and Seventy-fourth

Amendment) Acts, 1992]; making provision for reservation in promotion for Scheduled Castes and Scheduled Tribes [the Constitution (Seventy-seventh Amendment) Act, 1995; and the Constitution (Eighty-fifth Amendment) Act, 2002], are some of the notable Constitutional Amendments which testify to the fact that the Indian Parliament has throughout acted in consonance with the hopes and aspirations of the people.

Procedural Initiatives, Innovations and Reforms

It is true that while adopting the parliamentary form of governance we were influenced by our knowledge of the Westminster model, but what we have created here is a system that is very Indian in content as well as form. In the post-Independence period, the Indian Parliament can justifiably claim to have introduced several new devices to enable the members to voice the grievances of the people, to draw the attention of the Government to important developments and to elicit its views or stand thereon. Some of the major initiatives and innovations introduced by the Indian Parliament, over the years, include the Calling Attention Notices, Half-an-Hour Discussions, Short Duration Discussions, Business Advisory Committee, Committee on Papers Laid on the Table of the House, Committee on Government Assurances, etc. Some other initiatives of far-reaching importance insofar as parliamentary developments are concerned have been the setting up of the Departmentally-Related Standing Committees (DRSCs), Ethics Committee, the Committee on the Member of Parliament Local Area Development Scheme (MPLADS) and the Joint Committee on Empowerment of Women.

Functions and Achievements

Parliament today is not merely a law-making body. Over the decades, it has become more and more of a multi-functional institution performing a wide variety of roles. In its role as a representative institution, through the elected members, it represents the people and gives expression to their difficulties, problems and grievances and seeks solutions to them. This is achieved by making use of various procedural devices. Debates and discussions on legislative proposals or Financial Bills, motions to consider and approve Government policies, Motions of Thanks on the President's Address and Budget, etc. are some such devices which enable the members to raise issues of topical concern on the floor of the House. On another plane, Parliament, representing the diversity and plurality of the nation, also facilitates resolution of various conflicts within the polity and society and strengthens national unity and integrity. Thus, Parliament has been rendering yeoman's service in its conflict resolution and national integration roles.

Under the Constitution of India, Parliament is the supreme legislative body at the national level. The most important aspect of legislation lies in its vital social or sociological ramifications. All legislative proposals are initiated in Parliament in the form of Bills. During the last five decades, the Lok Sabha has effectively utilised its legislative competence in a number of vital areas. Starting May, 1952 and upto the Seventh Session of the Thirteenth Lok Sabha, as many as 2,709 Government Bills were introduced in the Lok Sabha. During the same period, as many as 3,044 Bills were passed, including those passed by Rajya Sabha and laid on the Table of Lok Sabha and subsequently passed.

Some of the important Government Bills which were introduced in the Lok Sabha and subsequently enacted are: The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; The Displaced Persons (Claims) Act, 1952; The Young Persons (Harmful Publications) Act, 1956; The Suppression of Immoral Traffic in Women and Girls Act, 1956; the Probation of Offenders Act, 1958; The Dowry Prohibition Act, 1961; The Maternity Benefit Act, 1961; The Motor Transport Workers Act, 1961; The Personal Injuries (Compensation Insurance) Act, 1963; The Payment of Bonus Act, 1965; The Contract Labour (Regulation and Abolition) Act, 1970; The Payment of Gratuity Act, 1972; The Juvenile Justice Act, 1986; The Muslim Women (Protection of Rights on Divorce) Act, 1986; The Commission of Sati (Prevention) Act, 1987; The Legal Services Authorities Act, 1987; The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988; The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; The National Commission for Women Act, 1990; The National Commission for Minorities Act, 1992; The

Protection of Human Rights Act, 1993; The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993; The National Commission for Safai Karamcharis Act, 1993; The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994; The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; The Insurance Regulatory and Development Authority Act, 1999; The Protection of Human Rights (Amendment) Act, 2000; The Juvenile Justice (Care and Protection of Children) Act, 2000; The Bihar Reorganisation Act, 2000; The Uttar Pradesh Reorganisation Act, 2000; The Madhya Pradesh Reorganisation Act, 2000; and The Information Technology Act, 2000.

Our Parliament has always been receptive to the aspirations of the people and the requirements of changing times. In the process, it has created institutional mechanisms to address issues of concern to the polity and society. For example, national level bodies like the National Human Rights Commission, National Commission for Scheduled Castes and Scheduled Tribes, National Commission for Women, National Commission for Minorities, National Commission for Backward Classes, etc. are creations of Parliament through appropriate legislations in response to specific needs.

As regards Parliament's role in law-making, it does not act as a rubber stamp for the proposals brought before it by the Executive. It discusses, scrutinizes, and if necessary, amends the drafts and thereafter by putting its seal of approval, legitimatizes legislative proposals formulated by the Executive.

Private Members' Bills

Our parliamentary rules and procedures provide for initiation of legislation by private members also. Since May 1952 upto the end of the Seventh Session of the Thirteenth Lok Sabha, 3,317 Private Members' Bills were introduced in the Lok Sabha. Till date, 14 Private Members' Bills have found their way into the statute book, of which 9 bills were introduced in the Lok Sabha. These are: The Muslim Wakfs Bill, 1952; The

Indian Registration (Amendment) Bill, 1955; The Proceedings of Parliament (Protection of Publication) Bill, 1956; The Code of Criminal Procedure (Amendment) Bill, 1953; The Women's and Children's Institutions (Licensing) Bill, 1953; The Code of Criminal Procedure (Amendment) Bill, 1957; The Salaries and Allowances of Members of Parliament (Amendment) Bill, 1964; The Hindu Marriage (Amendment) Bill, 1964; and The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Bill, 1968.

Insofar as its constituent role is concerned, we have discussed above how Parliament has facilitated the passage of 85 Constitution Amendment Bills till date, equipping the supreme document to keep pace with the times. As regards its leadership role, Parliament has provided the right forum for the national leadership to guide the nation on the path of peace and prosperity as also as a training ground for elected representatives for important roles in our national life.

Another important function of Parliament is to ensure that the administration and the Executive are accountable to the supreme representative body. This surveillance of administration is sought to be achieved through the different procedural devices at the disposal of members. As already mentioned, the discussion on Motion of Thanks to the President for his Address to Parliament, discussions on budgetary proposals, questions, calling attention, adjournment motions, private members resolutions, etc. provide ample opportunities to members to bring the Executive to book in case of any omission or commission on their part. There is also the provision for a no-confidence motion to take care of extreme situations.

Committee System

On an institutional plane, another method of effecting administrative accountability to Parliament is through the Committee System. Broadly, there are two kinds of Committees—Standing Committees and *ad hoc* Committees. The former are elected or appointed every year or periodically and their work goes on, more or less, on a continuous basis. The latter are appointed on a temporary basis as need arises and they cease to exist as soon as they complete the task assigned to them and submit their reports.

Among the Standing Committees, the three Financial Committees—Committees on Estimates, Public Accounts and Public Undertakings—constitute a distinct group as they keep an unremitting vigil over governmental spending and performance. While members of Rajya Sabha are associated with the Committees on Public Accounts and Public Undertakings, members of the Committee on Estimates are drawn entirely from the Lok Sabha. The control exercised by these Committees is of a continuous nature. They gather information through questionnaires, memoranda from representative, non-official organisations and knowledgeable individuals, on-the-spot official studies of organisations and oral examination of official and non-official witnesses. These Committees have adequate procedures to ensure that their recommendations are given due consideration by the Government.

Among other important Standing Committees in each House are the Committee on Petitions and the Committee on Government Assurances. The Committee on Petitions examines petitions on bills and on matters of general public interest and also entertains representation on matters concerning subjects in the Union List. The Committee on Government Assurances keeps track of all the assurances, promises, undertakings, etc. given by Ministers in the House and pursues them till they are implemented.

In order to further strengthen the Committee System and secure administrative accountability in a far more effective manner, seventeen Departmentally Related Subject based Standing Parliamentary Committees (DRSCs) were set up in 1993. These Committees, *inter alia,* consider the Demands for Grants of the concerned Ministries/Departments; the annual reports of these Ministries/Departments; national basic long term policy documents presented to the House, if referred to the concerned Committee by the Chairman, Rajya Sabha/Speaker, Lok Sabha; examine Bills pertaining to these Ministries/Departments as are referred to the concerned Committee by the Chairman, Rajya Sabha/Speaker, Lok Sabha; and make report thereon to the House. They do not, however, consider matters of day-to-day administration of the concerned Ministries/Departments. The recommendations of these Committees, over the years, have led to significant improvements in several areas of the organisation and working of the administrative machinery.

Bringing Parliament nearer to the People

In many countries of the world, the televising of parliamentary proceedings has helped in bringing the institution of Parliament nearer to the people and removing several misconceptions about its functioning. More importantly, constituents now have the opportunity of seeing for themselves the role being played by their elected representatives in ventilating their grievances. In India too, we have facilitated to the extent feasible the telecasting and broadcasting of the parliamentary proceedings. This has provided an "electronic bridge" between the people and the Parliament. It has not only enabled the people to comprehend the extent to which Parliament is a factor in shaping their destiny and through them, that of the nation, but has also contributed in further enhancing the credibility and confidence of the people in their elected representatives.

Challenges before Parliament

During the last five eventful decades, India's polity, economy and society have undergone dramatic transformation. The society has withstood many challenges, as can only be expected in a highly diversified country like ours. The economy has overcome many hurdles and is now in the process of integrating itself meaningfully with the global economy. However, it is in the political system that we have shown our maturity as a responsible and responsive nation, ever receptive to the hopes, aspirations and frustrations of our large population.

Yet, the polity and its institutions are very different from what they were in the early years of our Independence both in their contents and contours, and naturally so. The predominantly single party system of the fifties and the sixties has given way to political pluralism characterized by the existence of a very large number of political parties. Single party rule at the Union has been replaced by coalition arrangements. Alongwith these, the socio-economic background of the political elite has also changed substantially. Necessarily, all these have had a bearing on the functioning of our Legislatures in recent years. Some of the issues which pose a challenge to our Parliament are:

New Dimensions of Party System

One of the distinctive features of the Indian political system has been the multiplicity of political parties and groups. We have been witnessing, during the last few years, a gradual decline of the dominance of single party politics and the emergence of regional parties and political ideologies on ethnic, caste and other such lines. The logical corollary has been the emergence of new political identities. This is evident from the fact that the Thirteenth Lok Sabha has representation from 40 parties compared to 4 or 5 main political parties in the First Lok Sabha. These developments have thrown up other challenges as well—the possibility of hung Parliament, the constitutional predicament the President finds himself in the emerging situations, and political instability and its impact on national development and national unity and integrity. The complexities of present-day politics have a direct bearing on the office of the Speaker also. The Presiding Officer, today, has to reckon with a different environment with the differing perceptions of coalition partners and parties supporting the coalition from outside or otherwise on various issues which could find their echo in the Chambers of Parliament also. In such a situation, the management of the House becomes a little more difficult.

Imperative of Discipline and Decorum

There is a body of opinion that there has been steady decline in the standards of our Parliament and parliamentarians. Parliament being also a deliberative body, a certain amount of heat, noise and tumult on the floor is inevitable. But quite often, heated discussions lead to commotion and pandemonium and a lot of precious time of the House is wasted this way. All this causes concern as it undermines the respect for the representative institutions and affects their credibility with the people. Obstruction of the business of the House is, indeed, a serious matter. An onerous responsibility lies on each parliamentarian to see that the parliamentary time is used with greater discipline and sense of commitment, as it would lead to a higher degree of productivity. Parliament itself is seized of the issue and the *Rules of Procedure* are constantly reviewed to cope with the emerging realities.

Optimum Use of the Time of the House

As the time of the House is very precious, time available should be spent on meaningful and worthy debates. Of late, there has been a feeling in some quarters that over the years, the number of sittings as well as the time spent by the Legislatures in conducting various types of business have been decreasing.

A look at the time spent and sittings held during the First to the Thirteenth Lok Sabhas reveals that the Seventh Lok Sabha recorded an average of 7 hours and 9 minutes per sitting followed by the Ninth Lok Sabha which on an average devoted 6 hours and 55 minutes per sitting. However, of late, there is a decline in the trend and the average sitting of the Twelfth Lok Sabha was 6 hours and 32 minutes and that of the Thirteenth Lok Sabha (upto the Seventh Session) was 5 hours and 21 minutes. As regards the number of sittings of Lok Sabha, while the year 1956 recorded the highest number of sittings of 151, it came down to 77 in 1994. The year 1999 recorded the lowest number of 51 sittings. The House sat for 85 days in 2000 and 81 days in 2001. In view of the increasing governmental activities and the increasing incidents of adjournments of the House due to noisy scenes and pandemonium, etc., it is imperative that the Parliament should meet for specified number of days so that the business before the House could be transacted effectively.

Ethics in Public Life

Two fundamental requirements for upholding the dignity of Parliament are the integrity of the system itself and of the people who operate it. The importance of ethical values and morality in public life has long been recognised. In order to maintain the highest traditions in parliamentary life, members of Parliament are expected to observe a certain standard of conduct both inside the House and outside it.

An important facet of ethical practices is that of certain obligations which the members have towards the electorate. Members, as representatives of the people, have a responsibility towards their constituents. People have great expectations from their representatives for raising their concerns on the floor of the House and to work for their welfare. Moreover, participative deliberations during the proceedings of Legislature and their Committees, regular attendance during Sessions, strict compliance of quorum and a basic commitment towards the electorate are imperative.

On 4 March 1997, the Rajya Sabha constituted a nine-member Ethics Committee of the House to oversee the moral and ethical conduct of the members and to examine the cases referred to it in respect of their ethical or other misconduct. In the Lok Sabha, the Committee on Ethics was constituted on 16 May 2000. Today, the question of ethics is not confined only to developments inside the House. There are events and incidents which transcend the precincts of the House. It is in this context that the concept of ethics and standards for legislators has assumed added relevance and significance.

Electoral Reforms

The successful conduct of thirteen General Elections to the Lok Sabha and many more such elections to the State Legislatures and other representative bodies has proven beyond doubt the inherent democratic ethos of the Indian electorate. Over the years, the electoral system has undergone much transformation coping with emerging situations. The proliferation of political parties, the increasing frequency of elections at all levels, the rising election expenditures, the changing style of election campaigns and the ever shifting electoral combinations have drastically altered the face of Indian elections. As a result, more than ever before, electoral reforms have attracted the attention of all concerned. Some of the key issues in this area include the size of the constituency *vis a vis* the electorate; minimizing the number of contestants; State funding of elections and fixing a realistic amount that candidates could spend in elections; the use of money and muscle power in elections; checking the menace of criminalisation of electoral politics; preventing exploitation of caste, religious and regional sentiments in elections; a model code of conduct for political parties and contestants; equal access to the Government media, preferably for all contestants; and greater partnership between women and men in politics.

Successive Parliaments and Governments at the Centre have realised the importance of the issue of electoral reforms. Suggestions made either by the Election Commission or by the various Committees on electoral reforms from time to time have been under active consideration. But at the same time, it has to be recognised that a comprehensive reform of the electoral process is possible through the express will and consensus of the political parties in the country.

Parliamentary Diplomacy

Diplomacy is usually seen as a domain of the Executive. But, parliamentary diplomacy is also an important aspect of promoting relations with other countries. Parliamentary exchanges provide for informal channels of interaction on a people-to-people basis among the elected representatives of the peoples across the democratic world. This way, Parliaments the world over play a very good supportive role in promoting goodwill among nations. Our Parliament is also very active on this front. Issues of international nature are discussed on the floor of the House and Parliament provides active support to the Government in the context of foreign policy. Parliament is also in the forefront of extending active support to democratic movements abroad by adopting Resolutions and urging the Government to take a proactive stand. Our support to the anti-apartheid movement in South Africa is a shining example in this context. The stand our Parliamentary Delegations take in international parliamentary fora like the Inter-Parliamentary Union, the Commonwealth Parliamentary Association, the SAARC Speakers and Parliamentarians' Conference, the Asia-Pacific Parliamentarians' Conference on Environment and Development, etc. is in tune with promoting the concept of enlightened national interest which is one of the philosophical underpinnings of our foreign policy. Our parliamentarians seek to promote our national interests consistent with our view of the world as *Vasudhaiva Kutumbakam.*

Conclusion

Parliament has played a pivotal role in the gigantic task of building a strong and united India. It has always endeavoured to live up to the expectations of the people as a vehicle of social change. It is a tribute to our democratic system that we have been able to tackle several problems in a very democratic way. However, much more remains to be done. We can safely look forward to the Parliament marching forward with renewed vigour and dynamism in the years ahead as the sheet-anchor of our parliamentary democracy and as the most effective mechanism for redressal of the grievances of the people. In this onerous task, the Lok Sabha, as the elected House, has a critical role to play.

From the Pages of History

FIRST SITTING OF PARLIAMENT

THE
PARLIAMENTARY DEBATES
OFFICIAL REPORT
IN THE FIRST SESSION OF THE COUNCIL OF STATES
Commencing on the 13th May 1952

COUNCIL OF STATES
Tuesday, 13th May 1952

The Council met at a quarter to eleven of the clock, Mr. Chairman in the Chair.

PRESIDENT'S ORDER

SECRETARY: Hon. Members, the following Order has been made by the President:

"I, Rajendra Prasad, President of India, hereby appoint Dr. S. Radhakrishnan and Shri S.V. Krishna Moorthy Rao to be the persons, before either of whom members of the Council of States may make and subscribe the oath or affirmation in accordance with the provisions of article 99 of the Constitution of India.

RAJENDRA PRASAD,
The 11*th May* 1952. *President."*

OBSERVANCE OF PRAYERFUL SILENCE

MR. CHAIRMAN: In accordance with the usual procedure on such occasions, may I request you to stand for two minutes and observe silence?

(Hon. Members accordingly stood in silence for two minutes).

MEMBERS SWORN IN

MR. CHAIRMAN: We are all assembled here for the purpose of taking the oath or making the affirmation, as the case may be. Before I relate the procedure laid down, may I extend to you all a hearty welcome and express the hope that by our activities we will further the speedy and all-round progress of our people?

The procedure is laid down in the notices issued to you. The Secretary will read out the names. He may mis-pronounce them sometimes but you will not take objection to it. When the name of a Member is called by the Secretary, he will come from his seat to the right side of the Secretary's Table where a copy of the form of oath or affirmation will be handed to him. The Member will face the Chairman while making the oath or affirmation and will then, after shaking hands with him, pass behind the Chair to the other side of the Table where he will sign the Roll of Members. After signing the Roll he will return to his seat. Make the oath or affirmation on the right side and sign the roll on the left side before resuming your seat. The Secretary will now call out the names.

Shri N. Gopalaswami Ayyangar (Madras) (Minister for Defence).

Shri S.V. Krishna Moorthy Rao (Mysore).

ASSAM

Dr. S.K. Bhuyan.
Shri Lakshevar Borooah.
Shrimati Pushpalata Das.
Shri Mahammad Roufique.
Maulana M. Tayyebulla.
Shri R. Thanhlira.

BIHAR

Shri R.G. Agarwala.
Kazi Ahmad Hussain.
Shrimati Angelina Tiga.
Shri Jafar Imam.
Khwaja Inait Ullah.
Syed Mazhar Imam.
Shri Kailash Bihari Lall.
Shri Sri Narayan Mahtha.
Shrimati Lakshmi N. Menon.
Dr. Purna Chandra Mitra.
Kunwarani Vijaya Raje.
Shri Kishori Ram.
Shri Kameshwara Singh.
Shri Braja Kishore Prasad Sinha.
Shri Mahesvar Prasad Narain Sinha.
Shri Rajendra Pratap *alias* Balajee Sinha.
Shri Rajeshvar Prasad Narain Sinha.
Shri Rama Bahadur Sinha.
Prof. Ramdhari Singh Dinkar.
Shri Tajamul Husain.
Shri V.G. Gopal.

BOMBAY

Shri Abid Ali.
Shrimati Violet Alva.
Dr. B.R. Ambedkar.
Shri T.R. Deogirikar.
Shri Deokinandan Narayan.
Shri R.R. Diwakar.
Shri Bhalchandra Maheshwar Gupte.
Shri Shriyans Prasad Jain.
Shri Bal Gangadhar Kher.
Shrimati Lilavati Munshi.
Shri Chandulal P. Parikh.
Shri Dhairyashilrao Yeshwantrao Pawar.
Shri Rajaram Balkrishna Raut.
Shri Manilal Chaturbhai Shah.

MADHYA PRADESH

Shri Waman Sheodas Barlingay.
Shri Ramrao Madhaorao Deshmukh.
Shri R.P. Dube.
Pandit Sitacharan Dube.
Shri Chandragopal Gajadharprasad Misra.
Prof. Dr. Raghu Vira.
Shri Samiullah Khan.
Shrimati Seeta Parmanand.
Shri G.M. Thaware.

MADRAS

Shri E.K. Imbichibava.
Shri S. Guruswami.
Shri B.V. Kakkilaya.
Shri T.V. Kamalaswamy.
Shri Kommareddi Suryanarayana.
Shri Makineni Basavapunnaiah.

Janab M. Muhammad Ismail Saheb.
Shrimati Mona Hensman.
Shri K.L. Narasimham.
Shri V.M. Obaidullah Sahib.
Shri B. Pattabhi Sitaramayya.
Shri T.S. Pattabiraman.
Shri Puchalapalli Sundarayya.
Shri Pydah Venkata Narayana.
Shri K. Muhammad Rahmat-Ullah.
Shri G. Rajagopalan.
Shri P.S. Rajagopal Naidu.
Shri H.D. Rajah.
Professor N.G. Ranga.
Shri K.S. Hegde.
Shri S. Sambhu Prasad.
Shri V.M. Surendra Ram.
Shri Alladi Krishnaswami (Nominated)

ORISSA

Shri Radhakrishna Biswasroy.
Shri Jagannath Das.
Shrimati Shoila Bala Das.
Shri Prafulla Chandra Bhanj Deo.
Shri Bodh Ram Dube.
Shri Surendranath Dwivedy.
Shri Sundar Mohun Hemrom.
Shri Surendra Mahanty.
Shri B. Rath.

PUNJAB

Dr. Anup Singh.
Diwan Chaman Lall.
Sardar Darshan Singh Pheruman.
Shri Guraj Singh Dhillon.
Shri Hans Raj.
Shri Mukand Lal Puri.
Shri M.H.S. Nihal Singh.
Jathedar Udham Singh Nagoke.

UTTAR PRADESH

Shri Ahmad Said Khan.
Shri Akhtar Hussain.
Shri Amar Nath Agrawal.
Shri Amolakh Chand.
Shri Braj Bihari Sharma.
Shrimati Chandravati Lakhanpal.
Shri A. Dharam Das.
Babu Gopinath Singh.
Shri Har Prasad Saksena.
Shri Hirday Nath Kunzru.
Shri Indra Vidyavachaspati.
Shri Jagannath Prasad Agrawal.
Shri Jasaud Singh Bisht.
Shri Jaspat Roy Kapoor.
Begam Aizaz Rasul.
Shri Lal Bahadur Shastri (Minister for Railways and Transport).
Moulana Mohammad Faruqi.
Shri B.K. Mukerjee.
Dr. Murari Lal.
Shri Nawaab Singh Chauhan.
Shri Ram Kripal Singh.
Shri Ram Prasad Tamta.
Shri Shyam Dhar Misra.
Pandit Sham Sundar Narain Tankha.
Dr. J.P. Srivastava.
Shri Sumat Prasad.
Shri Tarkeshwar Pande.
Shri Thakur Das.

WEST BENGAL

Shri Beni Prasad Agarwal.

Shri Satyapriya Banerjee.

Shri Indra Bhusan Beed.

Shri C.C. Biswas (Minister for Law and Minority Affairs).

Shrimati Maya Devi Chettry.

Dr. Nalinaksha Dutt.

Shri Rajpat Singh Doogar.

Shri Bimal Comar Ghose.

Principal Devaprasad Ghosh.

Shri Bhupesh Gupta.

Shri Satyendra Narayan Mazumdar.

Shri Sures Chandra Majumdar.

Syed Nausher Ali.

Shri Satyendra Prosad Ray.

HYDERABAD

Shri S. Channa Reddy.

Shri Venkat Krishna Dhage.

Shri Dinshaw D. Italia.

Shri Kishen Chand.

Shri Konda Narayannappa.

Shri Narsingrao, Balbhimrao Deshmukh.

Shri Osman Sobhani.

Shri B.S. Venkat Rao.

JAMMU AND KASHMIR

Sardar Budh Singh.

Shri Pir Mohammed Khan.

Pandit Anant Ram.

Aga Syed Mohammad Jalali.

MADHYA BHARAT

Shri Kanhaiyalal D. Vaidya.

Shri Krishnakant Vyas.

Dr. Raghubir Sinh.

Shri V.S Sarwate.

Shri Trimbak Damodar Pustake

MYSORE

Shri B.P. Basappa Shetty.

Shri M. Govinda Reddy.

Shri C.G.K. Reddy.

Shri L.H. Thimmabovi.

Shri Mohamed Valiulla.

PATIALA AND EAST PUNJAB STATES UNION

Shri Jagan Nath Kaushal.

Lt. Col. S. Joginder Singh Mann.

Shri Kartar Singh.

RAJASTHAN

Swami Keshvanand.

Shri Ramnath Anandilal Podar.

Shri Barkatullah Khan.

Dr. Kalu Lal Shrimali.

Shrimati Sharda Bhargava.

Shri Mahendra Singh Ranawat.

Shri Harishchandra Mathur.

SAURASHTRA

Shri Bhogilal Maganlal Shah.

Dr. D.H. Variava.

Shri Jai Sukh Lal Hathi.

Shri Nanabhai Bhatt.

TRAVANCORE-COCHIN

Shri Abdul Razak.

Shri S. Chattanatha Karayalar.

Shri K.C. George.
Shri K.P. Madhavan Nair.
Shri Mathai Manjuran.
Shri C. Narayana Pillai.

AJMER AND COORG

Molana Abdul Shakoor.

BHOPAL

Shri Bheron Prasad.

BILASPUR AND HIMACHAL PRADESH

Shri C.L. Varma.

DELHI

Shri Onkar Nath.

KUTCH

Shri Premji B. Thacker.

MANIPUR AND TRIPURA

Munshi Arman Ali.

VINDHYA PRADESH

Captain Awadhesh Pratap Singh.
Shri Banarsi Das Chaturvedi.
Shri Gulsher Ahmed.
Shri Baij Nath Dube.

NOMINATED BY THE PRESIDENT

Shri Satyendranath Bose.
Shri J.M. Kumarappa.
Dr. Kalidas Nag.
Kakasaheb Kalelkar.
Shri Maithilisharan Gupta.
Shri Prithviraj Kapoor.
Shri Radha Kumud Mookerji.
Shrimati Rukmini Devi Arundale.
Professor Naraindas R. Malkani.

Mr. Chairman: Well, the first call is over, and some of the Members who did not respond when their names were called out may kindly assemble here at 3 o'clock, and they may then take the oath or make the affirmation.

The meeting proposed for Thursday is cancelled. So, we are meeting in joint session on Friday morning in the Central Hall, and half an hour after that we re-assemble here as a separate body—the Council of States.

So, we meet again on Friday morning in joint session first, and after the President's Address is heard, giving half an hour's interval, we re-assemble here. No meeting is fixed for Thursday. Those who did not respond to the call will kindly be here at 3 o'clock to take the oath.

The Council then adjourned for lunch till three of the clock.

The Council re-assembled after lunch at three of the clock, Shri S.V. Krishna Moorthy Rao in the Chair.

MEMBERS SWORN IN

Shri Gopaldas Bulakidas Mohta (Madhya Pradesh).

Shrimati Savitry Devi Nigam (Uttar Pradesh).

Shri Puranmal S. Lahoti (Hyderabad).

The Council then adjourned till Friday morning, the 16th May 1952.

THE

PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

Vol. I. No.

First day of the First Session of First Parliament of India

HOUSE OF THE PEOPLE

Tuesday, 13th May, 1952.

The House met at a Quarter to Eleven of the Clock.

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(No Questions: Part I not published)

Mr. Speaker: On this solemn occasion, when we meet for the first time as the elected House under the Constitution, it is but fit and proper that we all stand in silence for two minutes, before we begin our proceedings.

Secretary: I will now read out the orders of the President:

(1) "Whereas the offices of Speaker and Deputy Speaker of the House of the People are vacant;

In exercise of the powers conferred upon me by clause (1) of article 95 of the Constitution, I, Rajendra Prasad, President of India, hereby appoint Shri Ganesh Vasudeo Mavalankar, a Member of the House of the People, to perform the duties of the Speaker until the first sitting of the said House.

RAJENDRA PRASAD,

The 17th April, 1952. President,

New Delhi, the 12th May, 1952.

(2) "I, Rajendra Prasad, President of India, hereby appoint Shri G.V. Mavalankar and Shri M. Ananthasayanam Ayyangar, to be the persons before either of whom members of the House of the People may make and subscribe the oath or affirmation in accordance with the provisions of article 99 of the Constitution of India.

RAJENDRA PRASAD,

The 11th May, 1952. *President."*

[SHRI G.V. MAVALANKAR *in the Chair*]

MEMBERS SWORN IN

Shri Mavalankar: The names of hon. Members who have to take the

Oath or make the Affirmation will now be called by the Secretary one by one. The names of Members who do not take the Oath at the first call will be called at the end.

All efforts will be made by the Secretary to call the names of hon. Members correctly, as far as possible, still, if there be any mistake, I trust the hon. Members concerned, will generally excuse the same.

On the name of a Member being called by the Secretary, he will proceed from his seat to the right side of the Secretary's Table, where a copy of the form of Oath or Affirmation will be handed to him in Hindi or English as may be desired by the Member. The Member will face me, while making the Oath or Affirmation and will then, after shaking hands with me, pass behind my chair to the other side of the Table, where he will sign the Roll of Members. After signing the Roll, he will return to his seat.

Shri Jawaharlal Nehru [Allahabad District (East)-*cum*-Jaunpur District (West)].

Shri M. Ananthasayanam Ayyangar (Tirupati).

Prof. Nibaran Chandra Laskar [(Cachar-Lushai Hills—Reserved—Sch. Castes)].

Shrimati B. Khongmen (Autonomous Districts—Reserved—Sch. Tribes).

Shri Sitanath Brohmo-Choudhury (Goalpara-Garo Hills—Reserved—Sch. Tribes).

Shri Beli Ram Das (Barpeta).

Shri Rohini Kumar Chaudhuri (Gauhati).

Shri Kamakhya Prasad Tripathi (Darrang).

Shri Dev Kanta Barooah (Nowgong).

Shri Debeswar Sarmah (Golaghat-Jorhat).

Shri S.N. Buragohain (Sibsagar-North Lakhimpur).

Shri Jogendra Nath Hazarika (Dibrugarh).

Shri Chowkhamoon Gohain (Mishmi Hills District).

Shri S. Sinha (Pataliputra).

Shrimati Tarkeshwari Sinha (Patna East).

Shri B.R. Bhagat (Patna *cum* Shahabad).

Shri Brajeshwar Prasad (Gaya East).

Shri Ram Dhani Das (Gaya East—Reserved—Sch. Castes).

Shri Vijneshwar Missir (Gaya North).

Shri Satyendra Narayan Sinha (Gaya West)

Dr. Ram Subhag Singh (Shahabad South).

Shri Jagjivan Ram (Shahabad South—Reserved—Sch. Castes).

Shri Kamal Singh (Shahabad North-West).

Dr. Satyanarain Sinha (Saran East).

Pandit Dwarka Nath Tiwary (Saran South).

Shri Bibhuti Mishra (Saran *cum* Champaran).

Shri Bhola Raut (Saran *cum* Champaran—Reserved—Sch. Castes).

Shri B.B. Varma (Champaran North).

Dr. Syed Mahmud (Champaran East).

Shri Chandreshwar Narain Prasad Sinha (Muzaffarpur North-West)

Shri Digvijaya Narain Singh (Muzaffarpur North-East).

Shri Syamnandan Sahaya (Muzaffarpur Central).

Shri Awadheshwar Prasad Sinha (Muzaffarpur East).

Shri Rajeshwar Patel (Muzaffarpur *cum* Darbhanga).

Shri Rameshwar Sahu (Muzaffarpur *cum* Darbhanga—Reserved—Sch. Castes).

Shri Satya Narayan Sinha (Samastipur East).

Shri Shree Narayan Das (Darbhanga Central).

Shri Anirudha Sinha (Darbhanga East).

Shri Shyam Nandan Mishra (Darbhanga North).

Shri Lalit Narayan Mishra (Darbhanga *cum* Bhagalpur).

Shri Banarsi Prasad Sinha (Monghyr Sadr *cum* Jamui).

Shri Nayan Tara Das (Monghyr Sadr *cum* Jamui—Reserved—Sch. Castes).

Shri Mathura Prasad Mishra (Monghyr North-West).

Pandit Suresh Chandra Mishra (Monghyr North-East).

Shri Anup Lal Mehta (Bhagalpur *cum* Purnea).

Shri Kirai Mushar (Bhagalpur *cum* Purnea—Reserved—Sch. Castes).

Shri Banarsi Prasad Jhunjhunwala (Bhagalpur Central).

Shrimati Sushama Sen (Bhalgalpur South).

Shri Muhammad Islamuddin (Purnea North-East).

Shri Phani Gopal Sen (Purnea Central).

Shri Bhagwat Jha 'Azad' (Purnea *cum* Santal Parganas).

Shri Paul Jujhar Soren (Purnea *cum* Santal Parganas—Reserved—Sch. Tribes).

Shri Ramraj Jajware (Santal Parganas *cum* Hazaribagh).

Shri Lal Hembrom (Santal Parganas *cum* Hazaribagh—Reserved—Sch. Tribes).

Shri Nageshwar Prasad Sinha (Hazaribagh East).

Babu Ram Narayan Singh (Hazaribagh West).

Shri A. Ibrahim (Ranchi North-East).

Shri Jaipal Singh (Ranchi West—Reserved—Sch. Tribes).

Shri Gajendra Prasad Sinha (Palamau *cum* Hazaribagh *cum* Ranchi).

Shri P.C. Bose (Manbhum North).

Dr. Hari Mohan (Manbhum North—Reserved—Sch. Castes).

Shri Bhajahari Mahata (Manbhum South *cum* Dhalbhum).

Shri Chaitan Majhi (Manbhum South *cum* Dhalbhum—Reserved—Sch. Tribes).

Shri Kanhu Ram Deogam (Chaibassa—Reserved—Sch. Tribes).

Shri Akbar Chavda (Banaskantha).

Shri Gulzarilal Nanda (Sabarkantha).

Shri Maneklal Maganlal Gandhi (Panch Mahals *cum* Baroda East).

Shri Shantilal Girdharlal Parikh (Mehsana East)

Shri Tulsidas Kilachand (Mehsana West).

Shri Muldas Bhuderdas Vaishya (Ahmedabad—Reserved—Sch. Caste).

Shri Fulsinhji B. Dabhi (Kaira North).

Shrimati Maniben Vallabhbhai Patel (Kaira South).

Dr. Indubhai B. Amin (Baroda West).

Shri Kanayalal Nanabhai Desai (Surat).

Shri Bahadurbhai Kunthabhai Patel (Surat—Reserved—Sch. Tribes).

Shri Govindrao Dharmaji Vartak (Thana).

Shri Anant Savalaram Nandkar (Thana—Reserved—Sch. Tribes).

Bhau Saheb Kanavade Patil (Ahmednagar North).

Shri Shivram Rango Rane (Bhusaval).

Shri Hari Vinayak Pataskar (Jalgaon).

Shri Shaligram Ramchandra Bhartiya (West Khandesh).

Shri Jayantrao Ganpat Natawadkar (West Khandesh—Reserved—Sch. Tribes).

Shri Govind Hari Deshpande (Nasik-Central).

Shri Narhar Vishnu Gadgil (Poona Central).

Shrimati Indira A. Maydeo (Poona South).

Shri Ganesh Sadashiv Altekar (North Satara).

Shri B.H. Khardekar (Kolhapur-*cum*-Satara).

Shri K.L. More (Kolhapur-*cum*-Satara—Reserved—Sch. Castes).

Shri Shankar Shantaram More (Sholapur).

Shri P.N. Rajabhoj (Sholapur—Reserved—Sch. Castes).

Shri Chintaman Dwarkanath Deshmukh (Kolaba).

Shri Vyankatrao Pirajirao Pawar (South Satara).

Shri Balwant Nagesh Datar (Belgaum North).

Shri Shankargauda Veerangauda Patil (Belgaum South).

Major-General Jagannathrao Krishnarao Bhonsle (Ratnagiri North).

Shri Moreshwar Dinkar Joshi (Ratnagiri South).

Shri Rajaram Giridharlal Dubey (Bijapur North).

Shri Ramappa Balappa Bidari (Bijapur South).

Shri D.P. Karmarkar (Dharwar North).

Shri T.R. Neswi (Dharwar South).

Shri Joachim Alva (Kanara).

Shri S.K. Patil (Bombay City South).

Shri V.B. Gandhi (Bombay City North).

Shri Narayan Sadoba Kajrolkar (Bombay City North—Reserved—Sch. Castes).

Shrimati Jayashri Raiji (Bombay-Suburban).

Shri Babunath Singh (Surguja-Raigarh—Reserved—Sch. Tribes).

Sardar Amar Singh Saigal (Bilaspur).

Shri Resham Lal Jangde (Bilaspur—Reserved—Sch. Castes).

Shri Bhupendra Nath Misra (Bilaspur-Durg-Raipur).

Guru Gosai Agam Dasji (Bilaspur-Durg-Raipur—Reserved—Sch. Castes).

Shri Wasudeo Shridhar Kirolikar (Durg).

Pandit Bhagwaticharan Shukla (Durga-Bostar).

Shri C.D. Gautam (Balaghat).

Seth Govind Das (Mandla-Jabalpur South).

Shri M.G. Uikey (Mandla-Jabalpur South—Reserved—Sch. Tribes).

Shri Sushil Kumar Pateria (Jabalpur North).

Shri Khub Chand Sodhia (Sagar).

Pandit B.L. Tiwari (Nimar).

Shri Syed Ahmed (Hoshangabad).

Shri Raichand Bhai Shah (Chhindwara).

Shri B.L. Chandak (Betul).

Acharya Shriman Narayan Agarwal (Wardha).

Shrimati Anasuyabai Kale (Nagpur).

Shri Chaturbhuj V. Jasani (Bhandara).

Shri T.C. Sakhare (Bhandara—Reserved—Sch. Castes).

Mulla Abdullabhai Mulla Taherali (Chanda).

Dr. Panjabrao S. Deshmukh (Amravati East).

Shri K.G. Deshmukh (Amravati West).

Shri Goswamiraja Sahdeo Bharati (Yeotmal).

Shri Gopalrao Bajirao Khedkar (Buldana-Akola).

Shri Laxman Shrawan Bhatkar (Buldana-Akola—Reserved—Sch. Castes).

Shri B. Rajagopala Rao (Srikakulam).

[Shri M.A. Ayyangar *in the Chair*]

Shri Kandala Subrahmanyam (Vizianagaram).

Dr. Lanka Sundaram (Visakapatnam).

Shri Gam Malludora (Visakapatnam—Reserved—Sch. Castes).

Shri Velayudhan (Quilon *cum*-Mavelikkara—Reserved—Sch. Castes): On a point of information, Sir, when the Member has recited that, does he understand what he has said?

Shri M.A. Ayyangar: No point of order now.

Shri Nalla Reddi Naidu (Rajahmundry).

Shri Kanety Mohana Rao (Rajahmundry—Reserved—Sch. Castes).

Shri B.S. Murthy (Eluru).

Shri Kondru Subba Rao (Eluru—Reserved—Sch. Castes).

Shri Sanaka Buchhikotaiah (Masulipatnam).

Shri Kadiyala Gopala Rao (Gudivada).

Shri Kotha Raghuramaiah (Tenali).

Shri S.V.L. Narasimham (Guntur).

Shri C.R. Chowdary (Narasaraopet).

Shri Pisupati Venkata Raghuvaiah (Ongole).

Shri Mangalagiri Nanadas (Ongole—Reserved—Sch. Castes).

Shri B. Ramachandra Reddi (Nellore).

Shri Rayasam Seshagiri Rao (Nandyal).

Shri Halaharvi Sitarama Reddy (Kurnool).

Shri Tekur Subrahmanyam (Bellary).

Shri Paidi Lakshmayya (Anantapur).

Shri K.S. Raghavachari (Penukonda).

Shri Y. Eswara Reddi (Cuddapah).

Shri T.N. Viswanatha Reddy (Chittoor).

Shri T.T. Krishnamachari (Madras).

Shri P. Natesan (Tiruvallur).

Shrimati M. Chandrasekhar (Tiruvallur—Reserved—Sch. Castes).

12 Noon

Shri O.V. Alagesan (Chingleput).

Shri Doraswamy Pillai Ramchander (Vellore).

Shri M. Muthukrishnan (Vellore—Reserved—Sch. Castes).

Shri N.R.M. Swamy (Wandiwash).

Shri C.R. Narasimhan (Krishnagiri).

Shri N. Sathianathan (Dharmapuri).

Shri S.V. Ramaswamy (Salem).

Shri K. Periaswami Gounder (Erode).

Shri S.C. Balakrishnan (Erode—Reserved—Sch. Castes).

Shri S.K. Kandasamy (Tiruchengode).

Shri T.S. Avinashilingam Chettiar (Tiruppur).

Shri G.R. Damodaran (Pollachi).

Shri K.M. Vallatharas (Pudukkottai).

Shri V. Boovaraghasamy (Perambalur).

Dr. Edward Paul Mathuram (Tiruchirapalli).

Shri R. Venkataraman (Tanjore).

Shri C. Ramasamy Mudaliar (Kumbakonam).

Shri V. Veeraswamy (Mayuram—Reserved—Sch. Castes).

Shri N.D. Govindaswami Kachiroyar (Cuddalore).

Shri L. Elayaperumal (Cuddalore—Reserved—Sch. Castes).

Shri V. Muniswamy Avl. Thirukuralar (Tindivanam).

Shri A. Jayaraman (Tindivanam—Reserved—Sch. Castes).

Shri P.T. Thanu Pillai (Tirunelveli).

Shri A.V. Thomas (Srivaikuntam).

Shri M. Sankarapandian (Sanakranayinarkovil).

Shri V. VR. N. AR. Nagappa Chettiar (Ramanathapuram).

Shri K. Kamaraj (Srivilliputhur).

Shri S. Balasubramaniam (Madurai).

Shri P. Kakkan (Madurai—Reserved—Sch. Castes).

Shir K. Sakthivadivel Gounder (Periyakulam).

Shrimati Ammu Swaminadhan (Dindigul).

Shri U. Srinivasa Malliah [South Kanara (North).]

Shir B. Shiva Rao [South Kanara (South).]

Shri A.K. Gopalan (Cannanore).

Shri Nettur P. Damodaran (Tellicherry).

Shri K.A. Damodara Menon (Kozhikode).

Janab B. Pocker Saheb (Malappuram).

Shri K. Kelappan (Ponnani).

Shri V. Iyyani Eacharan (Ponnani—Reserved—Sch. Castes).

Shri P. Subba Rao (Nowrangpur).

Shri T. Sanganna (Rayagada-Phulbani—Reserved—Sch. Tribes).

H.H. Maharaja Rajendra Narayan Singh Deo (Kalahandi-Bolangir).

Shri Giridhari Bhoi (Kalahandi-Bolangir—Reserved—Sch. Tribes).

Shri G.D. Thirani (Bargarh).

Dr. Natabar Pandey (Sambalpur).

Shri Sarangadhar Das (Dhenkanal-West Cuttack).

Shri Niranjan Jena (Dhenkanal-West Cuttack—Reserved—Sch. Castes).

Shri B. Das (Jajpur-Keonjhar).

Shri Ram Chandra Majhi (Mayurbhanj—Reserved—Sch. Tribes).

Shir Bhagabat Sahu (Balasore).

Shri Kanhu Charan Jena (Balasore—Reserved—Sch. Castes).

Shri Harekrushna Mahtab (Cuttack).

Shri Lokenath Mishra (Puri).

Pandit Lingaraj Misra (Khurda).

Shri Uma Charan Patnaik (Ghumsur).

Shri Bijoy Chandra Das (Ganjam South).

Shri Tek Chand (Ambala-Simla).

Shrimati Subhadra Joshi (Karnal).

Dr. Virendra Kumar Satyawadi (Karnal—Reserved—Sch. Castes).

Shri Ranbir Singh Chaudhuri (Rohtak).

Shri Ghamandi Lal Bansal (Jhajjar-Rewari).

Pandit Thakur Das Bhargava (Gurgaon).

Lala Achint Ram (Hissar).

Shri Atma Singh Namdhari (Fazilka-Sirsa).

Shri Bahadur Singh (Ferozepore-Ludhiana—Reserved—Sch. Castes).

Shri Amarnath Vidyalankar (Jullundur).

Prof. Diwan Chand Sharma (Hoshiarpur).

Shri Ram Dass (Hoshiarpur—Reserved—Sch. Castes).

Shri Hem Raj (Kangra).

Sardar Teja Singh Akarpuri (Gurdaspur).

Sardar Surjit Singh Majithia (Tarn Taran).

Shri Gurmukh Singh Musafir (Amritsar).

Her Highness Rajmata Kamlendu Mati Shah [Garhwal Dt. (West) *cum* Tehri Garhwal Dt. *cum* Bijnor Dt. (North).]

Shri Bhakt Darshan [Garhwal Dt. (East) *cum* Moradabad District (North East).]

Shri Devi Datt Pant [Almora District (North East).]

Shri C.D. Pande [Naini Tal District *cum* Almora district (South West) *cum* Bareilly District (North).]

Shri Satish Chandra [Bareilly District (South).]

Shri Mukund Lal Agarwal [Pilibhit District *cum* Bareilly District. (East).]

Maulana Abul Kalam Azad [Rampur District *cum* Bareilly District (West).]

Shri Ajit Prasad Jain [Shaharanpur District (West) *cum* Muzffarnagar District (North).]

Shri Sudner Lall [Shaharanpur District (West) *Cum* Muzaffarnagar District (North)—Reserved—Sch. Castes.]

Shri Hira Vallabh Tripathi [Muzaffarnagar District (South).]

Shri Khushi Ram Sharma (Meerut District (West).]

Pandit Krishna Chandra Sharma [Meerut District (South).]

Shri Shahnawaz Khan [Meerut District (North East).]

Shri Raghubar Dayal Misra (Bulandshahr District)

Shri Shri Chand Singhal (Aligarh District).

Shri Nardeo Snatak (Aligarh District—Reserved—Sch. Castes).

Seth Achal Singh [Agra District (West).]

Choudhary Raghubir Singh [Agra District (East).]

Shri Digambar Singh [Etah District (West) *cum* Mainpuri District (West) *cum* Mathura District (East).]

Shri Rohanlal Chaturvedi [Etah District (Central).]

Shri Mulchand Dube [Farrukhabad District (North).]

Shri Badshah Gupta [Mainpuri District (East).]

Shri Lotan Ram [Jalaun District *cum* Etawah District (west) *cum* Jhansi District (North)—Reserved—Sch. Castes).]

Shri Harihar Nath Shastri [Kanpur District (Central).]

Pandit Balkrishna Sharma [Kanpur District (South) *cum* Etawah District (East).]

Shri R.V. Dhulekar [Jhansi District (South).]

Shri M.L. Dwivedi (Hamirpur District).

Shri Shiva Dayal Upadhyay (Banda District *cum* Fatehpur District).

Swami Ramanand Shastri [Unnao District *cum* Rae Bareli District (West) *cum* Hardoi District (South East)—Reserved—Sch. Castes.]

Col. B.H. Zaidi [Hardoi District (North-West) *cum* Farrukhabad District (East) *cum* Shahjahanpur District (South).]

Shri Bulaqi Ram Varma [Hardoi District (North-West) *cum* Farrukhabad District (East) *cum* Shahjahanpur District (South)—Reserved—Sch. Castes.]

Shri R.P. Nevatia [Shahjahanpur District (North) *cum* Kheri (East).]

Shri Ganeshi Lal Chaudhary [Shahjahanpur District (North) *cum* Kheri (East)—Reserved—Sch. Castes.]

Shrimati Uma Nehru [Sitapur District *cum* Kheri District (West).]

Chaudhari Paragi Lal [Sitapur District *cum* Kheri District (West)—Reserved—Sch. Castes.]

Shrimati Ganga Devi (Lucknow District *cum* Bara Banki District—Reserved—Sch. Castes).

Shri Feroze Gandhi [Pratapgarh District (West) *cum* Rae Bareli District (East).]

Shri Baij Nath Kureel [Pratapgarh District (West) *cum* Rae Bareli District (East)—Reserved—Sch. Castes.]

Dr. B.V. Keskar [Sultanpur District (South).]

Shri Lallanji [Faizabad District (North-West).]

Shir Panna Lal [Faizabad District (North West)—Reserved—Sch. Castes.]

Shri Birbal Singh [Jaunpur District (East).]

Shri Ganpati Ram [Jaunpur District (East—Reserved—Sch. Castes.]

Shri Masuriya Din [Allahabad District (East) *cum* Jaunpur District (West—Reserved—Sch. Castes.]

Shri J.N. Wilson [Mirzapur District *cum* Banaras District (West).]

Shri Rup Narain [Mirzapur District *cum* Banaras District (West)—Reserved—Sch. Castes.]

Shri Raghunath Singh [Banaras District (Central).]

Shri Rafi Ahmad Kidwai [Bahraich District (East).]

Chaudhri Hyder Husein [Gonda District (North).]

Shri Ram Shanker Lal [Basti District (Central East) *cum* Gorakhpur District (West).]

Shri Sohan Lal Dhusiya [Basti District (Central East) *cum* Gorakhpur District (West)—Reserved—Sch. Castes.]

Shri Hari Shanker Prasad [Gorakhpur District (North).]

Shri Dasrath Prasad Dwivedi [Gorakhpur District (Central).]

Shri Sinhasan Singh [Gorakhpur District (South).]

Shri Sarju Prasad Misra [Deoria District (South).]

Shri Bishwa Nath Roy [Deoria District (West).]

Shri Ramji Verma [Deoria District (East).]

Shri Sita Rama Asthana [Azamgarh District (West).]

Shri Vishwanath Prasad [Azamgarh District (West)—Reserved—Sch. Castes.]

Pandit Algu Rai Shastri [Azamgarh District (East) *cum* Ballia District (West).]

Shri Har Prasad Singh [Ghazipur District (West).]

Shir Ram Nagina Singh [Ghazipur District (East) *cum* Ballia District (South West).]

Shri A.K. Basu (North Bengal).

Shri Upendranath Barman (North Bengal—Reserved—Sch. Castes).

Shri Birendranath Katham (North Bengal—Reserved—Sch. Castes).

Shri Surendra Mohan Ghose (Malda).

Shri Kamal Krishna Das (Birbhum—Reserved—Sch. Castes).

Shri Muhammed Khuda Buksh (Murshidabad).

Shri Tridib Kumar Chaudhuri (Berhampore).

Shri Jagannath Kolay (Bankura).

Dr. Pashupati Mandal (Bankura—Reserved—Sch. Castes).

Shri Bharat Lal Tudu (Midnapore-Jhargram—Reserved—Sch. Tribes).

Shri Nikunja Behari Chowdhury (Ghatal).

Shri Satis Chandra Samanta (Tamluk).

Shri Basanta Kumar Das (Contai).

Shri Tushar Chatterjee (Serampore).

Dr. Mono Mohon Das (Burdwan—Reserved—Sch. Castes.)

Shri Abdus Sattar (Kalna-Katwa).

Pandit Lakshmi Kanta Maitra (Nabadwip).

Shri Arun Chandra Guha (Shantipur).

Shrimati Renu Chakravarty (Basirhat).

Shri Patiram Roy (Basirhat—Reserved—Sch. Castes).

Shri Kamal Kumar Basu (Diamond Harbour).

Shri Purnendu Sekhar Naskar (Diamond Harbour—Reserved—Sch. Castes).

Shri Asim Krishna Dutt (Calcutta South-West).

Dr. Syama Prasad Mookerjee (Calcutta South-East).

Shr Hirendra Nath Mukerjee (Calcutta North-East).

The House then adjourned for Lunch at half Past Two of the Clock.

The House re-assembled after Lunch at half Past Two of the Clock.

SHRI M.A. AYYANGAR *in the Chair.*

[**SHRI M.A. AYYANGAR:** The Secretary will now call the Members.]

Shri Ahmed Mohiuddin (Hyderabad City).

Shri Sadath Ali Khan (Ibrahim-Patnam).

Shir K. Janardhan Reddy (Mahbubnagar).

Shir P. Ramaswamy (Mahbubnagar—Reserved—Sch. Castes).

Shri Krishnacharya Joshi (Yadgir).

Dr. Shaukatullah Shah Ansari (Bidar).

Dr. S.A. Ebenezer (Vikarabad).

Diwan Raghavendra Rao (Osmanabad).

Shri R.G. Paranjpe (Bhir).

Shri Hanumantrao Ganeshrao Vaishnav (Ambad).

Shri Narayan Rao Waghmare (Parbhani).

Shri Devroa Namdevroa Pathrikar Kamle (Nanded—Reserved—Sch. Castes).

Shir C. Madhao Reddi (Adilabad).

Shri H.C. Heda (Nizamabad).

Dr. N.M. Jaisoorya (Medak).

Shri Baddam Yella Reddy (Karimnagar).

Shri Pendyal Raghava Rao (Warangal).

Shri T.B. Vittal Rao (Khammam).

Shri Ravi Narayan Reddy (Nalgonda).

Shri Sunkam Achalu (Nalgonda—Reserved—Sch. Castes).

Shri Mohanlal Saksena (Lucknow District *cum* Bara Banki (District).

Shri Vaijanath Mahodaya (Nimar).

Shri Nand Lal Joshi (Indore).

Shri Radhelal Vyas (Ujjain).

Shir Liladhar Joshi (Shajapur-Rajgarh).

Shri Bhagu Nandu Malvia (Shajapur-Rajgarh—Reserved—Sch. Castes).

Dr. Kailas Nath Katju (Mandsaur).

Shri Radha Charan Sharma (Morena-Bhind).

Shri Suriya Prashad (Morena-Bhind—Reserved—Sch. Castes).

Shri M.V. Krishnappa (Kolar).

Shri Dodda Thimmaiah (Kolar—Reserved—Sch. Castes).

Shri C.R. Basappa (Tumkur).

Shri N. Keshavaiengar (Bangalore North).

Shri T. Madiah Gowda (Bangalore South).

Shri M.K. Shivananjappa (Mandya).

Shri M.S. Gurupadaswamy (Mysore).

Shri N. Rachiah (Mysore—Reserved—Sch. Castes).

Shri H. Siddananjappa (Hassan-Chikmagalur).

Shri K.G. Wodeyar (Shimoga).

Shri Hira Singh Chinaria (Mohindergarh).

Shri Ranjit Singh (Sangrur).

Shri Ram Pratap Garg (Patiala).

Shri Hukam Singh Kapurthala (Bhatinda).

Shri Ajit Singh (Kapurthala-Bhatinda—Reserved—Sch. Castes).

Dr. Manik Chand Jatav-Vir (Bharatpur-Sawai Madhopur—Reserved—Sch. Castes).

Shri Shobha Ram (Alwar).

Shri Radheshyam Ramkumar Morarka (Ganganagar-Jhunjhunu).

Shri Panna Lall Barupal (Ganganagar-Jhunjhunu—Reserved—Sch. Castes).

Shri Bhawani Singh (Barmer-Jalore).

General Ajit Singhji (Sirohi-Pali).

Shri G.D. Somani (Nagaur-Pali).

Shri Nand Lal Sharma (Sikar).

Shri Daulat Mal Bhandari (Jaipur).

Shri Pannalal R. Kaushik (Tonk).

Shri Hari Ram Nathani (Bhilwara).

Shri Umashankar Muljibhai Trivedi (Chittor).

Shri Nemi Chandra Kasliwal (Kotah-Jhalawar).

Shri Rasiklal U. Parikh (Zalawad).

Shri Balvantray Gopaljee Mehta (Gohilwad).

Shri Narendra P. Nathwani (Sorath).

Shri A. Nesamony (Nagercoil).

Shri V.P. Nayar (Chirayinkil).

Shri. R. Velayudhan (Quilon-*cum*-Mavelikkara—Reserved—Sch. Castes).

Shri C.P. Matthen (Thiruvellah).

Shri P.T. Chacko (Meenachil).

Shri A.M. Thomas (Ernakulam).

Shri K.T. Achuthan (Crangannur).

Shri C.R. Iyyunni (Trichur).

Shri Jawala Prasad (Ajmer North).

Pandit Mukat Behari Lal Bhargava (Ajmer South).

Sardar Jogendra Singh [Bahraich District (West).]

Shri Keshava Deva Malaviya [Gonda District (East) *cum* Basti District (West).]

Pandit Chatur Narain Malviya (Raisen).

Shri N. Somana (Coorg).

Shri Gopi Ram (Mandi-Mahasu—Reserved—Sch. Castes).

Shri A.R. Sewal (Chamba-Sirmur).

3 P.M.

Shri Laisram Jogeswar Singh (Inner Manipur).

Shri Dasaratha Deb (Tripura East).

Shri Biren Dutt (Tripura West).

Shri Bhagwandutt Shastri (Shahdol-sidhi).

Shri Randaman Singh (Shahdol—Sidhi—Reserved—Sch. Tribes).

Sardar Raj Bhanu Singh Tewari (Rewa).

Shri Shiva Datt Upadhyaya (Satna).

Shri Ram Sahai Tiwari (Chhatarpur-Datia-Tikamgarh).

Shri Motilal Malvia (Chhatarpur-Datia-Tikamgarh—Reserved—Sch. Castes).

Bishop John Richardson [Nominated, Andaman and Nicobar Islands].

Shri Frank Anthony (Nominated Anglo-Indian).

Shri A.E.T. Barrow (Nominated Anglo-Indian).

Sardar Lal Singh (Ferozepore-Ludhiana).

Shri Vishnu Ghanshyam Deshpande (Guna).

Shri N.C. Chatterjee (Hooghly).

Shri Durga Charan Banerjee (Midnapore-Jhargram).

Shrimati Shakuntala Nayar [Gonda District (West)].

Shri Udai Shanker Dube [Basti District (North)].

Shri Anil Kumar Chanda (Birbhum).

Shri Santosh Kumar Dutta (Howrah).

Dr. Susilranjan Chatterjee (West Dinajpur).

Shri Atulya Ghosh (Burdwan).

Shri Shankar Rao Telkikar (Nanded).

Shri Mahendra Nath Singh (Saran Central).

Shri V.V. Giri (Pathapatnam).

Shri N. Ramaseshaiah (Parvathipuram).

Shri Suresh Chandra Deb (Cachar-Lushai Hills).

Shri Jhulan Sinha (Saran North).

Shrimati Sucheta Kripalani (New Delhi).

Shri Nemi Saran Jain [Bijnor District (South)].

Swami Ramananda Tirtha (Gulberga).

Shri Bheekha Bhai (Banswara-Dungarpur—Reserved—Sch. Tribes).

Shri Balwant Sinha Mehta (Udaipur).

Shri M.R. Krishna (Karimnagar—Reserved—Sch. Castes).

Shir Meghnath Shah (Calcutta North-West).

H.H. Maharaja Sri Karni Singhji Bahadur of Bikaner (Bikaner-Churu).

Shri Sivamurthi Swami (Kushtagi).

(SHRI G.V. MAVALANKAR *in the Chair*)

Shri Venkatesh, Narayan Tivary [Kanpur District (North) *cum* Farrukhabad District (South.]

Shri Raghubir Sahai [Etah District (North East) *cum* Budaun District (East).]

Shri Hotilal Agarwal [Jalaun District *cum* Etawah District (West) *cum* Jhansi District (North).]

Shri Munishwar Dutt Upadhyay [Pratapgarh District (East)].

Dr. M.V. Gangadhara Siva (Chittoor—Reserved—Sch. Castes).

Shri Rupaji Bhavji Parmar (Pancha Mahals *cum* Baroda East—Reserved—Sch. Tribes).

Shri Chandikeshwar Sharan Singh Ju Deo (Surguja-Raigarh).

Maulana Mohammad Saeed Masuodi (Jammu and Kashmir).

Shri Lakshman Singh Charak (Jammu and Kashmir).

Shri Sofi Mohd. Akber (Jammu and Kashmir).

Pandit Sheo Narayan Fotedar (Jammu and Kashmir).

Shri Muhammed Shafee Choudhri (Jammu and Kashmir).

Kh. Ghulam Qader (Jammu and Kashmir).

Shri P.T. Punnoose (Alleppey).

Rajkumari Amrit Kaur (Mandi-Mahasu).

Shri Jethalal Harikrishna Joshi (Madhya Saurashtra).

Dr. Suresh Chandra (Aurangabad).

Shri Chimanlal Chakubhai Shah (Gohilwad-Sorath).

Shri Amar Singh Sabji Lamar (Jhabua—Reserved—Sch. Castes).

Shri C. Krishnan Nair (Outer Delhi).

Shri Naval Prabhaker (Outer Delhi—Reserved—Sch. Castes).

Shri Tribhuan Narayan Singh [Banaras District (East)].

Shri Mavalankar: Is there any other hon. Member who is yet to take the oath: if so, he may kindly come to the table.

I have not got with me the exact number of hon. Members who have taken the oath, but I am told that almost all—barring about forty or so, whatever that may be—have taken the oath. Now the taking of oath will be done from day to day as those hon. Members remain present here with the result that—I believe a happy one—tomorrow's sitting is cancelled and we need not come here tomorrow again for the purpose of taking oaths.

Now the meeting is adjourned.

The House then adjourned till Quarter to Eleven of the Clock on Thursday, the 15th May, 1952.

PART I : OUR PARLIAMENT—AN OVERVIEW

PARLIAMENT AND STATE LEGISLATURES—IMPERATIVE OF DISCIPLINE AND DECORUM

K.R. Narayanan*

Introduction

Parliament and Legislatures constitute the head and front of the body-politic in India. They are the institutional embodiment of the audacious experiment in democracy launched by the founding fathers of our Republic. Though British in origin, they had their roots in India's ancient panchayat system, as Gandhiji pointed out, and today they have become established Indian institutions with character and dynamics of their own. There is no precedent in history in which a nation of such colossal size, complexity and population adopted the parliamentary form of Government and used democratic methods and processes for the development of a country of such stark poverty, illiteracy and ill-health and historical economic stagnation. We have made steady and substantial progress in this endeavour without sacrificing the freedoms of our people and imposing on them intolerable hardships. But much more needs to be done in consolidating and extending democracy and in resolving some of the major problems. "However theoretically good", Jawaharlal Nehru once said of parliamentary democracy, "it has to answer the questions put to it by the age. If it answers the questions, it is well-established." In the present age when both India and the world have changed and are changing, new questions are being put to it on the top of the old ones and the system has got to address them if it is to succeed.

Imperative of Orderly Functioning

In order to meet this critical challenge, parliamentary institutions have to be strengthened and have to adapt themselves creatively to new conditions and tasks. The first pre-requisite for this is to ensure their unobstructed, smooth and efficient functioning. If the Parliament and the Legislatures are perpetually assailed by disorders and disturbances they will not be able to function, not to speak of address the questions put to it by the age. Therefore, to obstruct their functioning and to besmirch their image is to jeopardize the future of the democratic system itself. A heavy responsibility thus rests upon the elected representatives, the Government and the political parties to make the presiding institution in our political system function smoothly, purposively and with dignity and decorum. That is not to say that the Parliament and the Legislatures should be reduced to tame and boring bodies, though even in the din and noise that often prevail there today, they manage somehow to bring about sufficiently long periods of boredom also. A Legislature ought to be an exciting place reverberating with debates and arguments and scintillating with wit and humour. It is a forum for the play of what Winston Churchill once called "the wild freedoms of democracy." But the wildest of democratic freedoms envisaged by Churchill did not include the type of disorders and disturbances that rock Parliaments today.

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*An All India Conference of Presiding Officers, Leaders of Parties, Ministers of Parliamentary Affairs, Whips and Senior Officers of Parliament and State Legislatures on "Discipline and Decorum in the Parliament and State Legislatures" was held in the Central Hall of Parliament House on 23-24 September 1992. The Conference was inaugurated by the President, Shri K.R. Narayanan (the then Vice-President) on 23 September 1992. The text of the Address is reproduced here with due permission from the Hon'ble President of India.

I am not one of those who believe that the current phenomenon of disorders and disturbances in Legislatures is going to be a permanent thing or such as to subvert the parliamentary system. They are like the infantile disorders or the measles of the middle-aged. They are bound to pass, but pass they must, otherwise the system will be in mortal danger. It is necessary that all those involved in the working and maintenance of the parliamentary system—the Government, the Opposition and the political parties and groups, both at the Centre and in the States—work together to contain this disturbing phenomenon within limits.

It has been said such disturbances are not peculiar to India but are a world phenomenon. I recall that in the Australian Parliament, the Leader of the Opposition threw a glass filled with water at the Prime Minister sitting on the Treasury Bench. In the same House, the Speaker once collapsed on the floor and breathed his last under the stress of an all-night troubled debate. In the Japanese Diet, free-for-all fist fights had sometimes taken place and the police had to be called in. In the early fifties, I remember that the Speaker of Japan's House of Representatives threw a large reception to which the diplomatic corps was invited; the first item in the entertainment was the demonstration of sumo wrestling by the Speaker himself, presumably to impress the members of the Diet present. The French Chamber of Deputies is reputed for uproarious scenes, and in the House of Commons, the Mother of Parliaments, disorders and disturbances have become frequent during the last decade.

Our Democratic Heritage

To say that this is a world phenomenon brings neither credit nor consolation for us in regard to increasingly disorderly behaviour in our Legislatures. We take pride in being an old civilization and culture. The elected representatives of our people are expected to maintain certain standards of courtesy and behaviour. Besides, though our democracy is an established system, it still needs nurturing in order to ensure the unity and progress of our 850 million people. While fissiparous forces have torn apart several monolithic States in the recent past, our nation with all its diversities and differences has cohered—partly because of the vent our democratic structure has provided for airing the grievances and demands of the people, and satisfying their urge for self-expression. Every member of Parliament and Legislature ought to bear in mind the over-riding obligation to preserve this precious heritage when he rises to disturb the proceedings of the House.

Parliamentarians : Custodians of the Nation's Ideals, Hopes and Faith

The argument has been advanced that when there is unrest in society, sometimes bordering on violent outbreaks, whether it would be realistic to isolate the Legislatures entirely from such developments? It is unavoidable for the Legislatures to reflect the mood of the people, but then as elected representatives they must not only reflect the mood, but also mould it giving a lead to the thinking and activities of the people in the right direction. As Walter Lippman, one of the perceptive thinkers of a foregone generation, has said: "Those in high places are more than administrators of government bureaus. They are more than the writers of laws. They are the custodians of a nation's ideals, of the beliefs it cherishes, of its permanent hopes, of the faith which make a nation out of a mere aggregation of individuals." Every parliamentarian and legislator, I believe, is a custodian of the nation's ideals, hopes and faith. This is clear to anyone who has observed the fervent hopes and the pathetic faith the ordinary masses repose in their would be representatives during election time. It is a hope and trust that transcends mere demands for doing things for the constituency. In the final analysis, it is the craving for a better future, and for law and order and security in society. If there is disorder in our society today it is, at bottom, "a divine rage for order". The proper way to voice this "divine rage" of the people is not through riotous and rowdy behaviour in the Legislatures by people's representatives. It is through constructive, persuasive and passionate advocacy of people's demands and expectations, and not by shouting, making discourteous remarks, throwing shoes, or doing *dharna* or *satyagraha* in the well of the House.

This Conference is the first one called in the last 45 years to discuss the issue of disorders and disturbances inside the Parliament and the Legislatures. That is a compliment to the parliamentarians of earlier years. But today the problem has become acute, if not intolerable. Even such solemn occasions like the President's and Governor's Address have been rudely disturbed. The telecast of even the more peaceful hour, the Question Hour, conveys the image of an unruly and rumbustious forum. A wise and experienced member of Parliament is said to have remarked: "For heaven's sake do not expose our children to the Question Hour in Parliament." A cartoon in a newspaper showed a TV announcer saying: "No news from Parliament today as nothing could be heard in the din." One very irritating habit is that of members indulging in almost running interjections during the speech being made by another member. Prolonged riotous scenes frequently paralyse the functioning of the House. The Presiding Officer's rulings are often ignored and on occasions even his physical security is threatened. A House of Commons Committee has stated: "...we consider the authority of the Chair to be paramount, since from it flow all other conditions necessary for orderly debate and the efficient despatch of business." It is of supreme importance in our Legislatures that the authority and dignity of the Chair is respected and upheld. At the same time, the Presiding Officers have got to be sensitive to the aspirations of the members and make the fairness and impartiality of their attitude demonstrable to the members as well as to the House at large. However, in cases of incorrigible erring on the part of members, he has to have recourse to one or other of the weapons available in his disciplinary armoury.

Why Disorders?

In most cases, disorders in the House arise out of a sense of frustration felt by a member due to lack of opportunities to make his point, or clear his chest off grievances of the people that move him or out of the heat of the moment. They are perhaps easier to deal with. What is more difficult to tackle is planned parliamentary offences and deliberate disturbances for publicity or for political motives. Even more serious are disturbances caused by decisions taken by political parties to disrupt the functioning of the House to get a demand conceded by the Government or to ignite or support some political movement outside the Parliament or the Legislature. The Presiding Officer or the Government as the case may be will have to take a firm stand or make a concession to tackle the situation. Often a judicious gesture made by the Government to the Opposition at the right moment could defuse the situation. But that is within the realm of discretion and leadership of the Presiding Officer or the Government. Lloyd George once said: "the House is the sounding board of the nation; it both speaks for, and speak to the nation". It is the ideal instrument for the Government to expound its policies and objectives. But it is not a forum to be steam-rollered by its brute majority. Taking the House into confidence, when there are no compelling reasons of State for not doing so, is the best way of promoting good relations between the Government and the Opposition. As for the members, it is certainly not through deafening din and noise that their messages can be transmitted to the people.

Joint Responsibility

The responsibility for the orderly functioning of the House rests on all its three constituents, namely, the members, the Ministers and the Presiding Officer. Rules of Procedure are there not to dampen the spirits of the members but to help them to raise matters in an orderly fashion. By violating the rules no one benefits. In exceptional circumstances, when the members are truly agitated by an event or an issue, the Presiding Officer, leaders of political parties and groups, and party whips can all sit together and explore ways of finding a solution. Indeed this is the most effective method of dealing with all serious parliamentary problems.

Parliamentary Reforms

I have earlier pointed out that often the reason for disorder and disruption in the House is that the members feel frustrated by the absence of opportunities for them in participating in discussions and debates. The Speaker can overcome this lacunae to some extent. Some kind of parliamentary reforms also may be needed. The recently proposed* Standing Committees of the Parliament would also give opportunities to members for participation and self-expression, but the Committees cannot be a substitute for the well-publicised and full-fledged drama of a parliamentary debate. For participating intelligently in Committee discussions or in debates in the House, the average member has to be given a lot of help. Research assistance and secretarial assistance is a must, if members are to fulfil their parliamentary responsibilities. The sense of frustration with regard to parliamentary participation can be overcome to some extent, if such facilities together with meaningful orientation courses by senior members are provided. It is the absence of a sense of involvement and participation in the parliamentary process that is largely responsible for disorderly behaviour in the House.

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*Seventeen Departmentally-Related Standing Committees of Parliament were constituted on 8 April 1993.

Other Deeper Reasons

There are perhaps deeper reasons behind the phenomenon of disorders and disturbances in Parliament and the Legislatures. There is some kind of a revolt against tradition in our country, as in the rest of the world, even in the midst of revivalist exuberance. There is a distemper in society peculiar to a period of change. There is also a new materialistic appetite affecting the educated and the entrepreneurial classes and filtering down to the rural masses. Perhaps as an offshoot of this, some sort of "hoodlum politics", to borrow a phrase used by the veteran parliamentarian Shri Hiren Mukherjee, is emerging at the periphery of our political system.

Role of the Media

Thus, disorderly behaviour is acquiring bit of a heroic aura assisted by the attention given to it by the media. What attracts publicity are not the serious speeches made in the House, but the unparliamentary remarks and disorderly activities of the members. The publicity that is given to and the fuss that is made of personages who have acquired notoriety and possess trouble-making capacity is a little surprising in a society that has always attached importance to certain basic values and virtues. However, I believe that the ordinary people in this country hold on to certain values and norms.

Impact of Telecasting of Proceedings

Without advocating telecast of all the proceedings of the House, I may say that it might be good if the conduct of the members is exposed to the full view of the constituents whom they represent. I am aware that this has to be done gradually and judiciously. Ultimately, only the opinion of the people can check the undesirable behaviour of their representatives. I may also add that, in the final analysis, only the good sense of the members themselves will rid the House of disorders and disturbances.

Selection of Candidates

Another angle from which the problem can be tackled is the process of selection of candidates for elections by the political parties. There is no reason why the parties should not pay greater attention to qualities and qualifications in the choice of candidates. The quality and the performance of the Parliament or the Legislature lie in the human stuff of which it is made.

Respecting Parliament

In any society or institution, courtesy and rules of behaviour are of paramount importance. A great sociologist has said that "an increasing degree of national unity is maintained not by call of blood and land, but by vague, intermittent and routine allegiances to a civil State supported by governmental use of police power and ideological exhortation." Neither police power nor ideology is enough to cement national unity, they are only supports to "the vague, intermittent and routine allegiances to a civil State." Routine allegiances to the Constitution, to the Head of the State, to Parliament, to the Judiciary, to the Presiding Officers of Parliament and the Legislatures, to the national flag and the national anthem, are among the intangible loyalties that unite an aggregate of individuals into a nation. I should, therefore, like to assert that respecting Parliament is an important intangible that contributes to the sustaining of our nation. And enabling the smooth and unobstructed functioning of the Parliament and the Legislatures, upholding the authority and the dignity of the Presiding Officers, and acknowledging the members as representatives of the sovereign people, are essential for the cohesion of our body-politic and the functioning of our political system.

DECORUM AND DISCIPLINE IN LEGISLATURES AND ETHICS IN PUBLIC LIFE

Krishan Kant

Legislatures are essentially political institutions and it would be naive to believe that they could be insulated from politics. Political parties have every right to use Parliament or Legislatures as national transmission towers from where to let the people know what the parties are doing for the people and how these parties are promoting the mandate they receive.

Causes of Disturbances/Disruptions

The problem arises when Parliament and the Legislatures become part of the tactics and strategies of political parties to gain specific advantage. It is this attitude which promotes the tendency to look upon the Parliament and the Legislatures as some sort of theatres, and unregulated theatres often descend to become the 'theatres of the absurd'. While airing diverse view points, a point is reached sometimes when the conduct of a member or a group of members goes beyond the acceptable norms and becomes a hindrance to the peaceful transaction of business of the House. Use of unparliamentary expressions, levelling baseless allegations, inadequate replies by the Government, untenable points of order and raising controversial issues without the permission of the Chair are generally the reasons which lead to pandemonium and turmoil inside the House. Members are always keen to raise issues which they feel they should. Due to the constraint of time, when they are sometimes prevented from doing so, they stand up simultaneously to make their point, almost inevitably raising the decibel level in the House.

Members sometimes assemble in the well of the House to demand a certain action from the Government or the Presiding Officer. On such occasions, Presiding Officers usually adjourn the House. Frequent adjournments of the House result in loss of legislative time and public money which could have otherwise been utilised in discussing important issues and policies. Legislative hours lost in the Rajya Sabha in the decade 1981-1991 were 3.59 per cent of the total time, which jumped to 10.31 per cent in the decade 1991-2001. The percentage of time lost due to disruptions in the Tenth Lok Sabha was only 9.95 per cent, while the percentage for only a part of the Thirteenth Lok Sabha is 28.93 per cent. Frequent adjournments of the Legislatures due to interruptions or disruptions have grave implications for the future of democracy and economy of the country, as they lower the prestige of Legislatures in public estimation, now that the proceedings of the Legislatures are watched live on the television by the whole country.

The imperative of maintaining discipline and decorum in Legislatures can hardly be over-emphasised. This calls for sincere efforts by the Presiding Officers, Leaders of the Houses, the Opposition, political parties, Minister of Parliamentary Affairs, Whips and by members themselves.

The Role of Presiding Officers

The Presiding Officers play a pivotal role in orderly conduct of business in the House. Their primary duty is to regulate the proceedings of the House in accordance with the rules of procedure. They have to see that adequate opportunities are provided to each member for raising matters of public importance in the House within the framework of the rules and conventions and also within the time available. It is, therefore, necessary that Presiding Officers should always be responsive, impartial, firm and tactful in conducting the proceedings of the House. Way back in 1968, the Page Committee had emphasised the importance of the Presiding Officers in maintaining order in the House. The Committee, in its report, observed: "One of the fundamental principles of parliamentary debate is that it should proceed in an orderly manner and one of the main duties of the Speaker is to ensure that a member who has the floor with the permission of the Speaker is allowed to be heard in silence".

The Presiding Officers are frequently criticised for not using their powers to check and discipline errant members and recalcitrant parties and groups. Parliament works best when there is cooperation among the Treasury Benches, the Opposition and the Presiding Officers. If the Presiding Officer is required to take punitive actions frequently against members and groups, he or she will weaken his or her arbitrational authority and expose himself or herself to wholly avoidable criticism. He, therefore, has to perform a delicate balancing act. The overriding purpose for him or her should be the efficient and the harmonious functioning of the House rather than an ambition to be the dispenser of King Solomon's justice. His or her choices are never optimal and the tasks easy. There is a convention still extant in the British Parliament, that the MP who is elected Speaker is ritually dragged to his or her Chair, signifying that he or she is reluctant to occupy it. In the medieval times, the Speakers often found themselves on the wrong side of the sovereign and ended up experiencing the sharp blade of the executioner on their necks. Modern Speakers are mercifully spared the sword, but, they are often seared with other forms of agony, one of which is to helplessly watch the House dissolve in chaos.

The Resolution adopted by the Conference of Presiding Officers of Legislative Bodies in India, held in New Delhi in October 1996, suggested: "Ideally, the persons who are to occupy the office of the Presiding Officer of Legislatures should be such that they have aptitude for maintaining proprieties and orderly conduct of business; are reputed for their impartiality, tact and diplomacy, and understanding and sympathy; and are capable of infusing confidence in the members".

These qualities on the part of Presiding Officers are all the more demanding when there is a 'hung Legislature' or a 'Coalition Government' is formed. The responsibility of Presiding Officer as an independent and impartial authority in the conduct of the House becomes not only difficult but all the more important as he has often to perform the difficult task of reconciling and adjusting conflicting interests of political parties with the internal dynamics of the multi-party system.

Role of the Government

In a parliamentary democracy, the Government needs to be more responsive and Opposition more responsible. Neither should create a situation which may lead to uproarious scenes in the House. Incomplete and cryptic replies by Ministers to the members' questions or otherwise also lead to unrest and disorder in the House. Presence of senior Ministers in the House should be ensured by the Government, when important issues are being discussed. It is also essential that important policy announcements should not be made by the Government outside Parliament when it is in Session.

Role of Leaders/Whips, etc.

Similarly, the Leader of the House, the Leader of the Opposition, Leaders of other political parties/groups and whips of political parties should try to be present in the House most of the time and be ready to prevent the uproarious scenes in the House and help Presiding Officers in conducting the proceedings in a peaceful atmosphere.

Role of Political Parties

It is often felt that persons with genuine credentials should be elected to Parliament and State Legislatures. This would, naturally, enhance the prestige and performance of the Legislative Bodies. The role of political parties while distributing tickets during elections assumes importance in this context. The Resolutions adopted by the Conferences of Presiding Officers held in New Delhi in October 1996 and at Simla in October 1997 also suggested the need for selection of right candidates by political parties with sufficient level of understanding and comprehension of social, economic, political and legal issues; pre-election training for their candidates on rules of parliamentary procedures and conduct of business in the House, etc. Political parties can play a greater role in disciplining their legislators both inside and outside the House more effectively than any other agency.

Role of Members

As representatives of the people, a member's status is an exalted one. While privileges are given to members to enable them to perform their parliamentary duties unfettered, these privileges also entail certain obligations. Dignified conduct inside and outside the House is one of the primary obligations of a member. Members may have to realise that without freedom of speech there cannot be any informed debate, but without order there can be no debate at all and the purpose of a deliberative body will be subverted.

If parliamentary democracy has to flourish and strike deep roots, democratic institutions have to be strengthened. This is possible only when its cherished values are internalised by all concerned, particularly by the legislators. Dissent is a democratic expression, but it should be expressed within parliamentary norms. It is through constructive and persuasive advocacy of people's demands and expectations that the purpose of Parliament and State Legislatures can be realised. In the specially convened Golden Jubilee Session of both Houses of Parliament, held from 26 August to 1 September, 1997, the Rajya Sabha resolved, *inter alia:*

> That the prestige of the Parliament be preserved and enhanced, also by conscious and dignified conformity to the entire regime of Rules of Procedure and Conduct of Business of the Houses and Directions of the Presiding Officers relating to orderly conduct of business, more especially by—
>
> — maintaining the inviolability of the Question Hour—refraining from transgressing into the official areas of the House, or from any shouting of slogans, and,

— invariably desisting from any efforts at interruptions or interference with the Address of the President of the Republic.

Debates in Parliament and State Legislatures sometimes do generate passion and heat. There is nothing abnormal about it. But it needs to be prevented from degenerating into unseemly behaviour. It is certainly not that our Legislatures should exhibit the peace of the grave. These institutions are not meant to be 'quiet places'. How can a forum where great issues of the nation and the world are discussed and, where alternative visions of national reconstruction are articulated, be a 'quiet place'! But, these should not also become places where anarchy rules. Great institutions of the State are established for preventing anarchy. They cannot allow themselves to become its victims.

Members should express themselves forcefully and even passionately, but they must stop short of becoming boisterous, libellous and personal. They should remain mindful about keeping inviolate the institutions of the House, which are germane to its smooth and efficient functioning. It is true that 'obstruction is an ordinary part of parliamentary procedure' (Jennings). It should be remembered, however, that such obstruction cannot be construed to mean physical obstruction. It can only be confined to the realm of intelligent use of rules and procedures and 'points of order', discomfiting the Government with hard but well argued criticism; but it should not and, cannot be, construed to sanction ruckus behaviour, anarchy, invasion of the well of the House and violence.

Great responsibility, therefore, lies with legislators who could bring about the desired impact. Pt. Jawaharlal Nehru once said: "Parliamentary democracy demands many things, demands, of course, ability. It demands a certain devotion to work as every work does. But it demands also a large measure of co-operation, of self-discipline and of restraint". Maintenance of discipline and decorum is, therefore, a pre-requisite for the smooth functioning of parliamentary democracy in which all of us have a stake.

Ethics in Parliament

It is in this context that the concept of ethics and standards of behaviour for legislators assumes relevance and significance. The Committee of Privileges of the Eleventh Lok Sabha had dealt with the question of ethics in public life and presented its report on Ethics, Standards in Public Life, Privileges, Facilities to members and other related matters. In its report, the Committee *inter alia,* recommended that a definitive Code of Conduct for members might be evolved and placed before the House for deliberation and adoption. The Code of Conduct might cover suggestions regarding administering of the Code, complaints in respect of breach of the Code and sanctions for violations of the Code. The recommendations made by this Committee in their Ethics related report, however, could not be considered due to the premature dissolution of the Eleventh and the Twelfth Lok Sabha. In the Rajya Sabha, the Ethics Committee was constituted on 4 March 1997, with the mandate to oversee the moral and ethical conduct of members and also to examine the cases referred to it with reference to their ethical and moral misconduct. The Committee is a kind of internal self-regulatory mechanism. In its first report presented to the Rajya Sabha on 8 December 1998, the Committee suggested a framework of the Code of Conduct for members of Rajya Sabha (For details, *see* Annexure). In its second report presented to the Rajya Sabha on 13 December 1999, the Committee, *inter alia,* made recommendations about the procedure for receiving complaints and inquiry into such complaints. The Committee also recommended imposition of penalties on members found to be guilty of unethical behaviour or other misconduct or for having contravened the Code or the rule.

The Presiding Officers of Legislative Bodies in India who attended a Symposium at Simla on 23 October 1997 also deliberated on the need for constitution of Ethics Committees in Legislatures. It was felt that there was a justification for establishing Ethics Committees in the context of the growing political consciousness of the people, changing public perceptions about legislators, trends of criminalisation of politics, fall in standards of probity in public life, etc. The Resolution that was adopted at the Symposium, therefore, called upon the State Legislative Bodies to establish Ethics Committees.

The Lok Sabha constituted on 16 May 2000 its own fifteen-member Committee on Ethics, which presented its first report on "Ethics related matters" to the Speaker and recommended that all existing norms of ethical behaviour for members as provided in the *Rules of Procedure and Conduct of Business in Lok Sabha* and *Directions by the Speaker,* be strictly enforced. The Committee, apart from recommending observance of certain general ethical principles by members, also recommended a procedure for receiving complaints relating to unethical conduct of a member and urgently making financial disclosures/declaration of interests by members obligatory.

Ethics in State Legislatures

Several State Legislatures have also constituted their own Ethics Committees with more or less the same objective as the Ethics Committees of the two Houses of Parliament. It is to be hoped that this will be a right step in the direction of establishing the primacy of ethics in our Legislatures.

Code of Conduct

Growing instances of interruptions of parliamentary proceedings have highlighted the need to evolve a Code of Conduct for the legislators which has been emphasized several times in the past. This has been on the agenda of the annual Conferences of Presiding Officers. In September 1992, a Conference of Presiding Officers, Leaders of Parties, Ministers of Parliamentary Affairs, Whips, Parliamentarians, Legislators and senior officers of Parliament and State Legislatures held in the Central Hall of Parliament House, deliberated on the theme 'Discipline and Decorum in Parliament and State Legislatures'. The unanimous Resolution adopted at the Conference emphasized the need for urgent action for more meaningful, effective and orderly functioning of the Houses of Parliament and State Legislatures. It made the important suggestion that political parties themselves should evolve a Code of Conduct for their legislators and enforce its observance.

The All India Conference of Presiding Officers, Chief Ministers, Ministers of Parliamentary Affairs, Leaders and Whips of Parties on "Discipline and Decorum in Parliament and Legislatures of States and Union Territories", held at New Delhi on 25 November 2001, strongly recommended *inter alia* that Ethics Committees be constituted by the Presiding Officers in all the Legislatures where these have not already been constituted for enforcing the Code of Conduct; earnest endeavours be made by all political parties to lay down parameters with emphasis on proven standards in public life, for selection of candidates for elections; and a more responsible and effective role in maintaining decorum in the House be played by the Leader of the House, the Leader of the Opposition and Leaders of political and Legislature Parties by ensuring disciplined behaviour on the part of their members. These recommendations reflect the growing unease about the standards of ethics, decorum and behaviour in our legislative institutions as well as a desire to come to grips with the problem.

Ours is the country, which gave the axiom of 'restraint in power and decorum in the assembly'—सभा में सभ्यता और सत्ता में संयम. Parliamentary institutions act as the wellsprings of national and societal values. What we enact in the Parliament today, shall be enacted and replayed over and over again, in towns and villages, factories and farms, schools and colleges and in every home and family. The life conditions in our times prompt men and women to seek examples, not mere leaders. If we wish to become genuine leaders—and as the people's representatives, that is a very legitimate expectation—we must speak to the people through our personal example: an example of character, decorum, order, dignity, tolerance and accommodation.

John Stuart Mill, that great votary of representative Government, believed that democratic government promoted a higher form of national character. But, he cautioned that there must be active effort to promote that character. "The test of real vigorous thinking", Mill wrote, "the thinking to ascertain truth, instead of dreaming dreams, is a successful application to practice."

Our effort should be to ensure that all our collective, constructive perceptions, which are many, are translated into visible and enduring practices. That is our challenge.

ANNEXURE

FRAMEWORK OF CODE OF CONDUCT FOR MEMBERS OF RAJYA SABHA

The Members of Rajya Sabha should acknowledge their responsibility to maintain the public trust reposed in them and should work diligently to discharge their mandate for the common good of the people. They must hold in high esteem the Constitution, the Law, Parliamentary Institutions and above all the general public. They should constantly strive to translate the ideals laid down in the Preamble to the Constitution into a reality. The following are the principles which they should abide by in their dealings:

(i) Members must not do anything that brings disrepute to the Parliament and affects their credibility.

(ii) Members must utilise their position as Members of Parliament to advance general well-being of the people.

(iii) In their dealings if Members find that there is a conflict between their personal interests and the public trust which they hold, they should resolve such a conflict in a manner that their private interests are subordinated to the duty of their public office.

(iv) Members should always see that their private financial interests and those of the members of their immediate family* do not come in conflict with the public interest and if any such conflict ever arises, they should try to resolve such a conflict in a manner that the public interest is not jeopardised.

(v) Members should never expect or accept any fee, remuneration or benefit for a vote given or not given by them on the floor of the House, for introducing a Bill, for moving a resolution or desisting from moving a resolution, putting a question or abstaining from asking a question or participating in the deliberations of the House or a Parliamentary Committee.

(vi) Members should not take a gift which may interfere with honest and impartial discharge of their official duties. They may, however, accept incidental gifts or inexpensive mementoes and customary hospitality.

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*Immediate family includes spouse, dependent daughters and dependent sons.

(vii) Members holding public offices should use public resources in such a manner as may lead to public good.

(viii) If members are in possession of a confidential information owing to their being Members of Parliament or Members of Parliamentary Committees, they should not disclose such information for advancing their personal interests.

(ix) Members should desist from giving certificates to individuals and institutions of which they have no personal knowledge and are not based on facts.

(x) Members should not lend ready support to any cause of which they have no or little knowledge.

(xi) Members should not misuse the facilities and amenities made available to them.

(xii) Members should not be disrespectful to any religion and work for the promotion of secular values.

(xiii) Members should keep uppermost in their mind the Fundamental Duties listed in Part IVA of the Constitution.

(xiv) Members are expected to maintain high standards of morality, dignity, decency and values in public life.

MAKING PARLIAMENTARY DEMOCRACY DELIVER ON ITS PROMISE

Atal Bihari Vajpayee

India's Parliament has an imposing look. Indeed, so imposing that, together with the equally grand design of the nearby complex of the Rashtrapati Bhawan, the South and North Blocks, and the majestic Rajpath that descends from Raisina Hill and ends in the magnificent monument of India Gate, it fills the viewer with awe. Historically, grandeur has always served a useful purpose—of acting as a source of national pride. And there can be no doubt that the Indian Parliament, along with its environs, is one of the grandest seats of power anywhere in the world.

Nevertheless, as awe-struck as any ordinary Indian on the first day that I saw this breathtaking building, I have often wondered: Will this Indian Parliament redeem its pledge to the people of India? Will Janpath, the road that brings people's elected representatives into this building, also bring their aspirations and their concerns, their problems and their dreams, their pleas and their prayers into this Temple of Democracy? Are their prayers being satisfactorily answered? Are their problems being properly discussed by the members of the Legislature? And is the Executive that the Legislature brings into being acting earnestly to fulfil the aspirations of the people?

Or is India's Parliament too distant from the lives of her teeming millions? And have the workings of the Legislature and the Executive become too dense, too mired in the divide between the Treasury and Opposition Benches, to reflect the true purpose for which they were created by the Constitution?

These questions have agitated me, in one way or the other, since the first time I entered the Lok Sabha in 1957. On 17 April 2002, I will have completed 45 years in Parliament, all of them in the Lok Sabha, barring two terms in the Rajya Sabha. The same questions trouble me even now, albeit in ways different from those in the past.

In saying this, I do not in the least intend to belittle the achievements of our parliamentary democracy, and in particular, of its highest institution.

India is the largest democracy in the world and we are justly proud of that fact. We are equally proud that we have preserved our democratic Constitution and the democratic system of governance against all odds in the past five decades. We have been having regular elections. Our democracy came under an eclipse only once, in the seventies, but that is now a closed chapter.

Parliamentary democracy in India has also given a fairly good account of itself in facing the myriad social, economic and political challenges that have been flung at it in the past fifty years. Our Parliament, along with State Legislatures and Panchayati Raj Institutions, has served to promote the guiding ideals of our Constitution—namely, participative democracy, secularism, social justice and growing opportunities for the citizens to partake of the nation's all-round progress.

No doubt, in each of these areas, there are shortcomings as well as successes. Maybe, there have been more shortcomings than successes in some areas, such as in our pledge to move towards an egalitarian socio-economic order. Therefore, we need a balanced approach as we look back at the first fifty years of our Parliament. We must never lose sight of, and never shy away from proudly projecting the enormous contribution of parliamentary democracy to the making of modern India. At the same time, we must honestly and self-critically analyze where and why we have lagged behind and take appropriate corrective action. It is such a sense of balance that will enable us to both consolidate our strengths and overcome our shortcomings. It is obvious that Parliament and State Legislatures have the highest responsibility in accomplishing these twin tasks.

The subject on which I am airing my views is not new. We have discussed it on numerous occasions and on many platforms. The most notable among them was the Special Session of Parliament to mark the Golden Jubilee of our Independence. At the end of that historic Session, we unanimously adopted a Resolution whose words still ring in our ears with their loftiness. The people of India watched the proceedings of that Session and drew inspiration from the solemn speeches made by the leaders of various political parties. They hoped that the convergence of the stated commitment of the ruling as well as Opposition parties would result in the better functioning of our Parliament.

We need to return to the main points of that debate again and again, and articulate our positions with a greater sense of responsibility. In my view, the Fiftieth Anniversary of the Parliament of India, which falls on

13 May 2002, is yet another important occasion for a collective debate. No doubt, it is a day of celebration, the day that Republican India constituted her first Lok Sabha in what was even then the largest electoral exercise in the world. What is more, India adopted universal adult franchise in her very first parliamentary election, a feat unequalled by many a developed democracy in the world. What a joyous day it was! My party, the Bharatiya Jana Sangh, could win only three seats in Parliament. Expectedly, the Congress won a resounding mandate. But for me, and for millions of ordinary political workers and citizens like me, who won and who lost was secondary. The truth is that we were all overjoyed at the inauguration of India's confident journey on the path of parliamentary democracy.

In my long innings in Parliament, I have observed two somewhat contradictory trends. First, democracy in India has taken deeper and firmer roots today than in the early decades of our Independence. More and more sections of our diverse society, especially those belonging to Dalits, Adivasis and OBCs, have found their due place in Parliament and State Legislatures. They have also gained greater representation in the structures of governance at the Centre and in the States. The social base of our democracy has both broadened and deepened. Social justice is an ideal accepted by all political parties. Simultaneously, regional aspirations have also found a greater expression in politics in States and in the Centre than at any time in the past. Continuing on this path, I have no doubt that we will soon arrive at the necessary consensus to legislate the long-awaited Women's Reservation Bill, which will be a revolutionary step in women's empowerment.

All these are welcome developments. These will be hailed by all those who believe that democracy works best when it is most representative. What is also welcome is that over the years, we have learnt to live with the imperative of coalition politics. No single political party today has the kind of overpowering sway both in the Centre and in the States that the Congress had in the initial decades of our Independence. Coalition politics is taking roots and is proving that it can be stable and successful if all partners learn to work together.

While this has undoubtedly been a positive trend in Indian democracy, all of us have also seen the second, negative trend in our democracy during the same period. And, that is the declining standards of the working of our Parliament and State Legislatures.

The growing lack of discipline and decorum in the House is only a visible manifestation of this decline. The tendency to disrupt the scheduled proceedings at the least provocation, or sometimes even without any provocation, is on the rise. In some State Legislatures, this has even resulted in violence on the floor of the House. The violence is not only to the property of the House, not only to the persons present, but perhaps, the greatest injury is caused to the spirit of democracy and to the trust of the voters. Not infrequently, even Presiding Officers and sometimes Governors are subjected to intimidation by errant members.

If anyone were to make a compilation of the precious time lost in Parliament and State Legislatures through repeated adjournments and other kinds of disruptions, it would present a very disquieting picture. But what is of concern is not just the time lost, it is also the manner of conduct of members inside the House and the resultant harm to the debate on subjects of major importance to the nation and to the people.

There was a time when the well of the House had, in the eyes of the members, almost the same sanctity as the sanctum sanctorum of a place of worship. One never committed a transgression there. These days, it has become the order of the day. It is seen as the surest way of forcing abandonment of the proceedings and adjournment of the House.

I often wonder with deep pain and disbelief why members of Parliament resort to such unbecoming behaviour. The greatness of our Parliament does not lie just in its majestic building. It is derived from and sustained by the quality of debate that takes place inside it, and the traditions of discipline and decorum that we set. Its greatness is determined by how the progressive laws that it enacts, and the fruitful discussions that it holds on various subjects, benefit the people and shape the destiny of the nation.

In this context, I have a few suggestions to make. One of the principal reasons for the growing lack of discipline and decorum in the House is the excessive competition among political parties to capture and retain power at any cost. This excessive competition often tends to create a confrontational relationship between the ruling and the Opposition parties. We have somehow forgotten that in a parliamentary democracy, both ruling and Opposition parties have an honourable and responsible role to play.

I have often stated my firmly held belief that democracy is not a game of 51 *vs.* 49. Who is 51 and who is 49, who should sit on the Treasury Benches and who should sit on Opposition Benches is the sovereign decision that the people alone make. But once they have given their mandate, the people themselves expect both the ruling and Opposition parties to adhere to the norms of democratic behaviour both inside and outside the House.

While constructive opposition is the essence of democracy, opposition for the sake of opposition weakens both democracy and good governance. Any attempt to destabilize a duly elected Government disturbs the healthy development of democracy in India. Similarly, the ruling party or the coalition has a duty to listen to the voice of the Opposition, to consult with them, to take them into confidence, and to create a consensus on as many issues as possible. This is especially important in the Indian context, since many parties tend to be in power in some States and in the Opposition in others. After an election or two, their roles usually reverse. The same thing has also been happening at the Centre.

In my long association with Parliament, I have watched and heard many stalwarts in action, belonging to both ruling and Opposition parties. There was, of course, the great Dr. Syama Prasad Mookerjee, my leader in the Jana Sangh, who was elected to the first Lok Sabha from Bengal. His speeches even today would enlighten and inspire every patriot and every lover of democracy. I have also seen Acharya Kripalani, Lal Bahadur Shastri, Morarji Desai, Jagjivan Ram, Bhupesh Gupta, Indrajit Gupta, N.G. Ranga, Jyotirmoy Bosu, Piloo Mody, Feroze Gandhi, not to speak of Pandit Nehru and Indira Gandhi. How can I not mention Rajiv Gandhi, who charmed everybody by his etiquette and youthful dreams for a better India. Not everyone subscribed to everyone else's ideologies or viewpoints on specific issues. Nevertheless, all of them have contributed to the rich and proud tradition of India's Parliament.

It saddens me to note that the attitude of wanting to hear the opposite point of view is waning. We are a diverse country. Political pluralism is the very heart of our democracy. It is what lends vibrancy and vigour to parliamentary debate. The first principle of parliamentary conduct is to believe that every point of view has a right to express itself, so long as it is expressed within the rules set by the Speaker.

Very often, members feel that the only way they can be heard or noticed by the House, and especially by the Press and the television cameras, is not through the quality of their intervention, but by using their lung power to the fullest. The casualty of such behaviour is not only discipline and decorum in the House, but also meaningful debate that is so essential for giving expression to the aspirations and concerns of those who elect us.

The third corrective that I would like to present here is the virtue of self-discipline. Discipline and decorum in the House cannot be enforced by diktat alone, although the people certainly expect the Presiding Officers to act more firmly while conducting the business of the House. However, all of us are aware of the limitations of punitive action. Ultimately, there is no better antidote to indiscipline than self-discipline, and discipline enforced by the political party through its whips.

I am reminded here of what Pandit Nehru said way back in 1952: "You may define democracy in a hundred ways, but surely one of its definitions is self-discipline of the community. The less the imposed discipline and the more the self-discipline, the higher is the development of democracy." If democracy demands community-wide discipline, it certainly must demand discipline among representatives elected by the community.

India's Parliament will celebrate its Fiftieth Anniversary at a time when the nation is faced with daunting challenges—many old ones but some new ones too. Removal of poverty and improving the living standards of each and every family in the country, especially those who have so far been denied the fruits of development, undoubtedly continues to be the greatest challenge before us. India has made some progress in this direction, but a lot more needs to be done, especially in the area of removing regional as well as social disparities in development.

We are also faced with the challenge of cross-border terrorism, which manifested itself in its most diabolical form in the terrorist attack on our Parliament on 13 December. All these challenges can be overcome, provided we—the ruling and Opposition parties in Parliament and State Legislatures, with the active cooperation from the citizenry—act with unity of purpose, unyielding determination, commitment to the basic values of democracy and uncompromising faith in Indian nationalism, the wellspring of inspiration and hope to all our one billion brothers and sisters, irrespective of their caste, creed, language or region.

As I look back to my first day in the Lok Sabha, I cannot but wonder how far our parliamentary democracy has travelled. I had never imagined that one day I, a backbencher belonging to a marginal party, would be mandated by the people to sit on the chair that Pandit Nehru first occupied. But this is a chair that imposes enormous responsibility on its occupant. Indeed, every chair in the Lok Sabha or the Rajya Sabha places enormous responsibility on its occupant. It is this sense of responsibility, this sense of accountability to the people who have elected us and to the Constitution that we have all sworn allegiance to, which alone can bridge the gap between the promise and performance of India's Parliament in the next half century.

PARLIAMENT—A MULTI-FUNCTIONAL INSTITUTION

P.M. Sayeed

On 13 May 2002, the Parliament of India is completing a glorious and eventful period of fifty years of its working. It is indeed a proud occasion for our country and a milestone for Indian democracy. The responsibilities shouldered by our Parliament in diverse fields during all these years have not only been pivotal in ensuring good governance but also a major factor in strengthening our democratic polity. Proving the prophets of doom—who were skeptical about India's ability to govern itself—wrong, we have rather impressed the world with our political wisdom and leadership qualities in running a representative democracy successfully as an independent, sovereign nation for more than half a century. Today, our parliamentary system is, indeed, on a strong foundation.

Our Parliament is a great democratic institution having been positioned overarching in the political horizon and constitutional set-up. The functions of Parliament assume great significance in view of the basic principles and assumptions associated with parliamentary democracy. A parliamentary form of government acknowledges the fact that in this system Parliament derives its power directly from the consent of the people expressed through periodic elections and that it exists to implement the will of the people. The parliamentary system also ensures the best possible participatory democratic system and active interaction between the people and their representatives. In this system, the Executive not only emanates from Parliament but is also accountable to Parliament for all its acts of omission and commission. This accountability of the Executive to Parliament is based on the principle that since Parliament represents the will of the people, it should be able to oversee and keep the Executive under control and constant surveillance.

The Role and Functions of Parliament

The Parliament of India is a depository of varied functions as delineated by the Constitution and, obviously, also of those powers and functions which inherently and conventionally rest with Parliaments. Like other Parliaments, our Parliament has also emerged as a multi-functional institution. It is the political nerve centre of the country, acting as a mirror of the society, accommodating the needs of changing times, shouldering responsibilities and engaging itself fully in the process of running our parliamentary polity. Parliament, today, performs a variety of functions. Some of the cardinal roles and functions of Parliament are: ensuring Executive accountability, law making, financial functions, constituent functions, representational role, educational role, national integration, informational functions, training and recruitment of the leadership, besides some miscellaneous functions.

Ensuring Executive Accountability

Under the parliamentary form of government, the Executive is responsible to Parliament for all its acts of omission and commission. Therefore, an important function of Parliament is to ensure and enforce accountability. In India, the Executive powers are formally vested by the Constitution in the President, the Head of the State, who acts on the aid and advice of the Council of Ministers. Therefore, the *de facto* Executive is the Council of Ministers, which is collectively responsible to the Lok Sabha, the popularly elected House. According to article 75 (3) of the Constitution of India, "The Council of Ministers shall be collectively responsible to the House of the People". It implies that the Council of Ministers is answerable to the House for all its actions and remains in office so long as it enjoys its confidence. The need of maintaining the majority support in Lok Sabha always acts as a check on the Government, keeping the accountability factor in the forefront.

There are two aspects to Executive responsibility. The Council of Ministers is collectively responsible to Lok Sabha and the Ministers are individually responsible to Parliament for the work of the Ministries under their charge. Under the ministerial responsibility, the Ministers owe moral responsibility for all matters and performance of the Departments they head. The accountability of the Council of Ministers involves a constant control of the Parliament over the Government as control and accountability go together. The accountability of the Executive is particularly to the popularly elected House of Parliament. An obligation, therefore, rests on the Lok Sabha to oversee the working of the Government. Control by the House ensures accountability since Ministers are constantly conscious of the fact that they will be called to account.

Control over the Executive by Parliament has several objectives. It is aimed to ensure that the Government of the day delivers and performs to the best of its ability for public good. Parliamentary surveillance is essential to ensure that power is not misused or abused and to prevent mal-governance. The policies and programmes of the Executive are constantly subjected to parliamentary scrutiny, a function of the House carried out by the members. One of the basic objectives of a representative democracy is to see that governance is carried out according to the wishes of the people and it strives to meet their needs and promote their welfare. In a parliamentary system, the political Executive heading the administration has the mandate of the people and it is through Parliament that its accountability to the people is ensured. For proper scrutiny and critical examination of the Executive, several opportunities and devices are available to the members of Parliament. As is said, eternal vigilance is the price of democracy. Therefore, only vigilant members by following the actions of the administration can check whether they are in conformity with the policies and programmes as approved by Parliament and ensure that parliamentary democracy performs on expected lines. They are free to raise on the floor of the House improprieties in the working of the Government and criticize the Government for its failure to act efficiently and carry out administration keeping in mind the wishes and larger interests of the people.

The Question Hour is an important occasion to ensure Executive accountability. It provides an opportunity to the members to scrutinize almost every aspect of the functioning of the Government. The efficacy of this procedural device has been well acknowledged. Certain matters pursued by members in the past led to enquiries by the Government or Parliamentary Committees. Such enquiries included the Mundhra Deal, Dalmia-Jain Inquiry, Import Licence case, etc.

A major occasion for discussion on Government policies and the review of administration by Parliament is provided by the discussion on the Motion of Thanks on the Address by the President. The President's Address contains, *inter alia*, information about the policies and programmes which the Government intends to pursue and implement. It is a time for stock-taking as the past performance of the Government and its existing and proposed programmes are critically commented upon. Parliamentary debates on this Motion get wide publicity and this is often a compulsion for the Government to act accordingly.

Parliamentary control over the Executive is exercised through various other procedural devices also like motions, resolutions, half-an-hour discussions, etc. The ultimate step in this regard is to vote the Government out of power by passing a No-confidence Motion in Lok Sabha or defeating the Motion of Confidence, if any, brought before the House by the

Government. The discussions on the Motions of Confidence or No-confidence, as the case may be, provide an opportunity to the members to evaluate the performance and decide the fate of the Government. However, in reality, the decision to withdraw support to the Government is a political one and is effected by political parties through Parliament. Parliamentary support to Government is inextricably linked with the political situation at the particular time, especially when a multi-party coalition Government is in power. It goes without saying that the Parliament cannot function in a political vacuum. In India, several incidents, eight of them in all, of the fall of the Governments in the past due to want of majority in the Lok Sabha, mid-way through its term, were linked to unstable coalitions and their breaking up or re-alignments of parties, leading to the withdrawal of support to the Government. Out of these, on four occasions, the Governments fell on the floor of the House and in the remaining cases, the Governments resigned without a trial of strength in the Lok Sabha.

The Parliamentary Committees have also emerged as useful instruments for facilitating greater administrative accountability to Parliament. There are three Financial Committees, 17 Departmentally-Related Standing Committees (DRSCs) and several other Parliamentary Committees like the Committee on Government Assurances, the Committee on Petitions and the Committee on Subordinate Legislation to whose scrutiny the administration is subjected to.

Further, the Opposition plays a crucial role in performing certain functions of Parliament, especially surveillance over the administration. The 'oppositional role' is performed by the Opposition effectively in the House by criticizing the Government for its failure, inefficiency or ineffective policy. Similarly, in expressing public opinion, and bringing to the attention of the Government popular grievances, the Opposition is more vocal. Ideally the relation between the Opposition and the Treasury Benches is marked by tolerance. A responsible and vigilant Opposition is inevitable for the effective functioning of Parliament. Keeping this in view, the position of the Leader of the Opposition has been accorded statutory recognition.

Law Making

The characteristic function of a Legislature, as the name itself suggests, is the making of law. Under the Constitution of India, Parliament is the supreme legislative body at the national level. The scheme of distribution of powers between the Union and the States are enumerated in the Union List, the State List and the Concurrent List under the Seventh Schedule of the Constitution. The power to legislate on residuary matters, *i.e.* subjects not mentioned in any of the three Lists, is vested in Parliament.

The Parliament as the national Legislature embodies the collective will of the people and the law making process in Parliament provides an opportunity to the members to express their opinion as to what a bill should or should not contain. In India, members of Parliament have always shown keen interest in legislation.

The policies of the Government for the socio-economic development, welfare of the people and for regulatory functions are implemented through legislation. The Parliament had a heavy burden of legislative work immediately after Independence. It had to lay down the legal framework essential for the operation of several areas, which had remained undefined or had to repeal those laws which had become obsolete and archaic as India became Independent and embarked upon achieving the avowed goal of national development and building a progressive civil society. The Representation of the People Act, 1952; The Industrial Disputes Act, 1955; The Dowry Prohibition Act, 1961; The Payment of Bonus Act, 1965; The Abolition of Privy Purses (Constitution 26th Amendment Act), 1971; The Bank Nationalisation Act, 1969; The Anti-Defection Law (Constitution 52nd Amendment Act), 1985; The Commission of Sati (Prevention) Act, 1987; The Protection of Human Rights Act, 1993; The Information Technology Act, 2000, etc., are some of the many landmark legislations of Indian Parliament which sought to achieve some basic goals and purposes and had far-reaching influence on the working of our polity and economy. It is remarkable that some of these legislations were made by amending the Constitution.

It may be mentioned here that the Indian Parliament does not enjoy the legislative supremacy enjoyed by the British House of Commons. In our country, every law made by Parliament is to be in conformity with the Constitution. The Judiciary, by exercising the power of judicial review, can strike down any law on the ground of unconstitutionality.

Through the progressive measures approved by Parliament, endeavours have been made to ensure that all sections of our people get socio-economic justice. The processes of strengthening our political institutions and empowerment of the people have also been immensely facilitated by several important legislations. Parliament took a landmark initiative in amending the Constitution to reserve not less than one-third of the total number of seats for women in Panchayati Raj Institutions and local urban bodies through the Constitution 73rd (Amendment) and 74th (Amendment) Acts. At present, a Constitution Amendment Bill to provide for reservation of as nearly as may be one-third of the total number of seats for women in Lak Sabha and State Legislative Assemblies is also pending in Parliament.

On another plane, Parliament has also facilitated the setting up of institutions like the National Commission for Scheduled Castes and Scheduled Tribes, the National Commission for Minorities, the National Commission for Backward Classes, the National Human Rights Commission and the National Commission for Women, etc.

A significant aspect of legislation by Parliament is that the initiative is almost entirely in the hands of the Executive. Though a large number of Private Members' Bills are introduced in Parliament by enthusiastic members, they have hardly any chance of being enacted unless the Government extends its support. This is evident from the fact that during the last fifty years, only 14 Private Members' Bills could be brought into the statute book. Nevertheless, Private Members' Bills serve a very useful purpose. They help in drawing the attention of the Government and the House towards the need or desirability of enacting laws on matters raised in such bills.

Parliament puts its seal of approval on legislative proposals brought forward by the Government after debates and discussions thereon in the Houses—sometimes after an examination by the concerned DRSC or a specially constituted Select/Joint Committee. The Committees, after examining the bill, submit reports to the House with recommendations. During discussions, the members may point out flaws, if any, in the drafts and suggests amendments required therein, which the Government or the House may or may not accept. Parliament confers legitimacy on the proposals brought before it by adopting them and this remains the basis of the power of Parliament. Without the approval of Parliament, no bill can become an Act.

Control over the Budget

'Who holds the purse, holds the power' wrote Madison long ago in the *Federalist* in the context of the US Constitution. It is through the control of the nation's purse or the public finance that Parliament exercises control over the Executive. The principles involved in the financial functions and procedure of Indian Parliament are essentially the same as followed by the British House of Commons. The financial initiative usually rests in the hands of the Government. The Constitution of India has laid down the well established fundamental principles governing the financial system of the Government under our parliamentary polity. They are: no tax can be imposed except with the authority of Parliament; no expenditure can be incurred except with the sanction of Parliament; and all expenditures except that specifically charged by any enactment of Parliament require to be sanctioned on an annual basis. This is called the principle of annuality. On Money Bills and granting of moneys to the Government, the Lok Sabha has a predominant position as Money Bills can be introduced only in the Lok Sabha.

Every year, an annual financial statement called the Budget is presented to Parliament which contains the new policies, taxation proposals and estimates of receipts and expenditure. After presentation of the Budget, a General Discussion on the Budget takes place after which the Demands for Grants of various Departments are examined by the concerned DRSCs. Since 1993, the detailed examination of Demands for Grants is done by the DRSCs. After the Demands are examined by the Committees and their reports are presented to the House, the House takes up the discussion on various Demands for Grants. Parliament has a right to discuss these proposals and also to move cut motions thereon. If a cut motion is carried, it amounts to lack of confidence in the Executive.

The discussions during the budgetary proceedings have always been a very significant part of Parliament's functions in India. After the Demands for Grants are voted by the Lok Sabha, the next step is the introduction of an Appropriation Bill. The Constitution lays down that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law. An Appropriation Bill seeks to provide for the appropriation out of the Consolidated Fund of India of money required to meet the Grants made by the Lok Sabha and the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before the Parliament.

Parliament's oversight on public finance and Government's expenditure are effectively done through the Committees. To ensure parliamentary control over grants made to the Government and to supervise and control the actual appropriations, Parliament exercises close scrutiny of public accounts, mainly through two of its Committees—the Public Accounts Committee and the Committee on Estimates. The Estimates Committee is a very important Committee and through it, the House exercises control and surveillance over the administrative machinery, not only on the expenditure sanctioned and incurred by various Departments of Government, but also over the general policies of the various branches of administration. The functions of the Estimates Committee include scrutinizing Budget estimates, suggesting economies in the expenditure and finding out whether money is well laid out. By convention, the Committee's recommendations are generally accepted by the Government and acted upon. The Public Accounts Committee also enables Parliament to effectively exercise its financial control over the Government. Adverse reports by the Public Accounts Committee pointing out lapses attract wide media coverage. The Committee has the power to scrutinize and report on almost any matter relating to management of public finance. The reports of the Comptroller and Auditor General are referred to the Committee for examination.

Constituent Functions

Under article 368 of the Constitution of India, Parliament is empowered to amend the Constitution according to the procedure laid down, which is different from the procedure for ordinary legislation. The process for amending the Constitution can be initiated only by the introduction of a bill for the purpose in any of the two Houses of Parliament. There are three categories of provisions in the Constitution as far as the amendment procedure is concerned. Amendments of certain provisions require a special majority in each House, namely a majority of not less than two-thirds of the members present and voting and the majority of the total membership in each House. Some provisions require only a simple majority while a limited number of provisions need an additional requirement, *i.e.*, ratification by the Legislatures of not less than one-half of the States. Under article 368, Parliament can thus make new constitutional provisions or alter or repeal any existing provisions subject to the constitutionality of such amendments and without affecting the 'basic structure' of the Constitution.

The matter relating to the scope and extent of the power of Parliament to amend the Constitution has been subjected to judicial review on many occasions in the past and has seen the tilting balance in favour of the Judiciary and the Parliament on and off.

So far, out of the 93 Constitution Amendment Bills introduced by various Governments in Parliament, 85 Amendments have been enacted by Parliament in the last 50 years and this high number is often cited as a reason for the demands for reviewing the Constitution. A National Commission to Review the Working of the Constitution was appointed on 22 February 2000. The Commission has submitted its Report to the Union Government on 31 March 2002 with its proposals and recommendations for the changes to be brought about in the Constitution of India.

Representational Role

The representational role of Parliament is a fundamental one. The people want progress in their life, more employment opportunities, infrastructure facilities like roads, health care facilities, etc. for which assistance from the Government is essential. The needs and difficulties of the people are taken up and presented to the Government and the concerned Ministries by the members in all possible ways on the floor of the House and outside. Parliament is thus a forum for grievance redressal of the people. The members of Indian Parliament have always shown great devotion to their representational role and responsibilities like constituency work, promotion of the welfare of the people and developmental matters. The demands made by the members on behalf of the people on the floor of the Parliament often prevail upon the Government in taking appropriate remedial actions.

A member of Parliament is a link between the Government and the people for exchange of information for deciding the developmental goals and priorities. With the introduction of the Member of Parliament Local Area Development Scheme (MPLADS), members are now involved directly and more closely in developmental works in their constituencies and States. This helps in creating awareness among people and educating them on various issues confronting them and the nation. However, the representational role has a much wider scope than what is usually referred to as constituency work. Matters which may not be constituency-specific, but have great significance in the national context, are also taken up by members in Parliament.

Educational Role

It is significant that the proceedings and deliberations in Parliament are recorded history and are available for future references. Parliamentary debates are preserved in printed volumes and constitute a rich source of information about the state of affairs, the policies, the issues and the political climate in the country at a particular time. The Lok Sabha debates since 1996 are also available on the Internet. Members of Parliament constitute the cream of the political elite, the most experienced leaders and committed public servants. If one goes through the parliamentary debates, one cannot miss highly analytical and incisive deliberations on various issues.

National Integration and Conflict Resolution

The central position of the Parliament in our polity has given scope for many more functions. Parliament, as the most important institution in our political system, has contributed to raise political awakening and political development in the country. A more politically conscious society would be less vulnerable to divisive and obstructive forces.

Now there are more than 40 parties which have their representatives in Parliament. They engage in healthy exchange of views on the floor of the House; they tend to agree to disagree and to accommodate and tolerate each others' views. The experience of the last five decades has shown that some very delicate problems and controversial issues become less contentious and easy to resolve once discussed in the Parliament.

Informational Role

Parliament has an important informational role. Being the supreme legislative and deliberative forum of the nation, it has the unique distinction of having and receiving the most authentic information from the Government on a whole range of issues and activities which gets disseminated to the media and the public.

Recruitment and Training of Leaders

Another function of Parliament is to serve as the national reservoir for political leadership. Parliament attracts potential leaders from all over the country and serves as a spring board for success in parliamentary life by grooming and training members in political leadership skills. Its working and procedures enable them to become familiar with the art of governance. Getting elected and staying as a member of Parliament is an important aspect of politics in a parliamentary democracy. The long years a member spends in Parliament and its Committees transform him into a seasoned parliamentarian and sharpen his persuasive and debating skills. Their parliamentary performance is a stepping stone to higher responsibilities and positions. Ministers are normally drawn from and remain part of Parliament and this makes Parliament an excellent institution for recruitment and training of our political leadership.

Conclusion

The performance of our Parliament during the last fifty years has been highly commendable. Given the socio-political situation in the country, the pivotal role played by the Parliament in keeping our political system in a vibrant environment is well-acknowledged. The resilience of our polity and our concern for people's welfare, commitment to democracy, Rule of Law, political unity and national integration are all nurtured and ably expressed by Parliament.

The maintenance of constitutional order or governance within the framework of the Constitution, giving representation to different groups and different shades of political opinion, etc., have been eminently served by the functioning of our Parliament, upholding the principles of parliamentary democracy both in letter and spirit. The contributions of the members, political parties, the Executive and the media in enabling Parliament to perform its functions effectively have been substantial. All these have helped to maintain a high level of the public trust in the institution. The efficient and effective functioning of our Parliament is an important requirement for achieving the goals of democratic governance. The last fifty years of our Parliament have set sound precedents and traditions for its working and have enhanced the strength of our parliamentary system.

PARLIAMENT AND THE PEOPLE

Somnath Chatterjee

Introduction

The celebration of the Fiftieth Anniversary of our Parliament provides an opportunity for a review of our entire political spectrum and it is important to ascertain whether and how far, as the most important institution, it has been able to live up to the expectations of the people of this country and achieve what the founding fathers of our Constitution enjoined.

Vision of our Constitution Makers

Parliament, which consists of the President, Lok Sabha and Rajya Sabha, with Lok Sabha as the highest elected body, occupies the pivotal position in our constitutional set-up and symbolizes the very ethos of our country. The framers of the Indian Constitution deliberated over a considerable period with regard to the appropriateness of the political system which will serve our country best, considering the numerous problems which had accumulated over the years during which we remained subjugated. The Constituent Assembly had to decide the direction which India as a free nation should take and what would be the priorities and who should be the beneficiaries.

Obviously the Constitution makers were called upon to evolve a structure which would be the most suited and would bring about speedy progress and particularly provide for the early removal of poverty, end of exploitation of the deprived sections of the people, universal education, an effective health care system, jobs for all and other rights which the citizens of a free country are entitled to enjoy.

India, coming out of foreign domination, had to be converted into a resurgent, dynamic and developed country intended to play its due role in the comity of nations and the founding fathers of the Constitution, after protracted deliberations and after considering the strengths and weaknesses of the different political systems, decided to adopt parliamentary democracy with universal adult suffrage as the most suitable for our country, in preference to a Presidential system of Government, which results in the concentration of power in the hands of one person.

During the British rule, the people of India had not only lost their political freedom but also economic freedom and had been denied effective participation in the governance of the country. The Constituent Assembly, therefore, opted for the system of parliamentary democracy in a form suitable for the country with emphasis on the fundamental rights of the citizens and the obligation of the Government to be accountable to the people through their chosen representatives.

Every citizen of the country above the age of 18 years and free from certain disqualifications, can exercise voting rights at the election. A citizen above the age of 25 years is entitled to contest the election to the House of the People (Lok Sabha) and a citizen aged 30 years and above can be member of the Council of States (Rajya Sabha), which is indirectly elected. The members of Lok Sabha, being directly elected from their respective constituencies, provide the link between the people of the country and the Parliament as an institution.

The people of India participate in the parliamentary process through their elected representatives. Members of Parliament who are elected on the basis of their pledge contained in the manifestoes are expected, as such representatives, to articulate the urges and aspirations of the people, discuss problems and issues facing the nation and the people, and deliberate upon the formulation of national policies and programmes with a view to finding solutions to the peoples' problems. To enable the members to discharge their duties and functions adequately, the Constitution has conferred on them the freedom of speech in Parliament and certain immunity from judicial proceedings. Further, as members of Parliament, they are entitled to exercise powers and privileges and enjoy immunities, not to maintain their status but primarily to enable them to discharge their duties and functions fearlessly and without any unreasonable restraint.

Executive Accountability to Parliament

The very postulate of parliamentary democracy, as is enshrined in our Constitution, is the collective responsibility of the Central Council of Ministers to the House of the People, that is, the Lok Sabha, being the highest elected body. For every action of the Government, it will be liable to answer in Parliament and the Government cannot avoid rendering accountability on any plea except, perhaps, that of national security, which will also depend upon the decision of the Presiding Officer of the House.

In the ultimate analysis, the accountability of the Government is to the people of the country and is enforced in the Parliament through their elected representatives. Thus, it is essential that the members of Parliament should function in a manner which would compel the Government of the day to discharge its responsibility to the people and govern in a responsible and transparent manner. A vigilant Parliament like a vigilant Press provides safeguard to a democracy from degenerating into a dictatorship. Ultimately, the justification of all public institutions, and the Parliament is the most important one, lies in its ability to respond to the needs of the people and solve their problems. Its performance in forcing or persuading the Government to take steps for alleviating the miseries and difficulties of the people and in improving their lot by solving the problems faced by them is closely watched by the people. Thus, there is a close and proximate relationship between the people and the Parliament which has not only to be nurtured but has to be made more meaningful and more rewarding.

Challenges before the Nation

In a developing country like ours with myriad problems, the people's reasonable needs are legion and require special attention, particularly of the more deprived sections of the community who have been denied the minimum wherewithals of a civilized existence, even after half a century of our Independence. There exists great disparity amongst the people and more than half of them still groan under grinding poverty and nearly sixty per cent people have remained illiterate. Questions are sometimes asked whether there is any deficiency in our Constitutional provisions which inhibit the fulfilment of the peoples' needs or there has been a failure by those who are enjoying power in discharging their Constitutional mandate as indicated by the popular verdict.

Though in certain respects like Centre-State relations, emergency powers in the hands of the Centre, the provision for the imposition of President's rule and making right to work and right to universal education fundamental rights, there may be different points of view, it has been rightly observed that the Constitution has not failed the country but it is those in power who have failed in implementing its provisions in their true letter and spirit.

The primary function of the Parliament no doubt is legislation, debate, discussion and decision on issues of national importance and enforcement of Executive accountability through their elected representatives. The question which, as members of Parliament, we will have to answer is whether we have been able to ensure that the Parliament discharges its primary and important functions appropriately and whether the people, who are the real masters, are able to receive what is due to them by enforcing Government's accountability.

Parliament is constituted by the people; it has to deliberate upon and deal with problems of the people and ultimately find their solutions for the people. The rules of business and procedure of the Houses of Parliament have been framed for the orderly conduct of the business of the respective Houses and several avenues for obtaining redressal of the people's grievances have also been provided in the rules.

After five decades of Independence, non-performance, aberrations and distortions have nearly taken over almost every sphere of our national activity, including the political and administrative systems, as a result of which the majority of our people face awesome problems and do not enjoy even the minimal rights which, the Constitution, our organic law, contemplates for them. Abysmal poverty, illiteracy, child mortality, lack of job opportunities, absence of adequate health care, non-availability of pure drinking water in many areas, amongst others, are the problems which still haunt the common people and have resulted in the effective denial of the Constitutional and indeed the basic human rights to our people. Common people of our country, particularly the toiling sections, the workers, the peasants and farmers, the Scheduled Castes and Scheduled Tribes and the minorities have not been able to fulfil their minimum needs. The condition of the working class in the country is still extremely uncertain inasmuch as with a large incidence of industrial sickness, widespread retrenchment, closure of Public Sector Undertakings, it has become precarious. In such circumstances, members of Parliament have to play a very active, responsible and effective role.

A few years earlier, as the records will show, nearly half of the time of the Lok Sabha was devoted to the work of legislation while nearly 30 per cent of the time was utilized for discussion of financial business and the remaining time in the enforcement of the Government's accountability.

Unfortunately, the priorities have undergone a substantial change and Parliament nowadays devotes lesser and lesser time in the discharge of one of its main functions, namely consideration of the financial business and enforcement of the Government's accountability. The Lok Sabha was not able to discuss and scrutinize, for several years in the recent past, the Demands for Grants of more than two or three Ministries and as a result, expenditure of the Central Government to the tune of crores and crores of rupees has been approved without any parliamentary scrutiny.

Departmentally-Related Standing Committees

Since the Tenth Lok Sabha, the system of Departmentally-Related Standing Committees of Parliament has been in existence and the Ministries and Departments of the Central Government have been brought under the jurisdiction of one or the other of the Standing Committees. The Committees, as is well known, comprise 45 members representing different political parties, according to their respective numerical strength and are nominated by the Speaker of Lok Sabha or Chairman of the Rajya Sabha as the case may be. These Committees are required to consider the Demands of the Ministry and the Department concerned and make their report to the Houses and also to examine such bills pertaining to the concerned Ministry/Department as are referred to the Committee, to consider the Annual Report of the Ministry/Department and also national basic long term policy documents presented to the Houses, if referred to the Committee by the Presiding Officers. Of course, the Committees are not empowered to consider any matter of day-to-day administration of the concerned Ministries/Departments. The reports of the Committees have only persuasive value and are treated only as considered advice given to the Government.

Over the years, a doubt has arisen as to how far the Standing Committees have been able to discharge their functions effectively, as it has been found that their utility as an important parliamentary forum to obtain the redressal of the peoples' grievances is limited. They can be effective only if their recommendations, particularly which are unanimous, are treated as binding on the concerned Ministry or the Department, unless the House as a whole decides to the contrary.

Other Important Committees

Parliament has evolved different procedures for enforcing the accountability of the Government, namely, through the Financial Committees like the Public Accounts Committee, the Estimates Committee as also the Committee on Public Undertakings. The Committee on Government Assurances looks into the extent to which assurances, promises, undertakings, etc. given by the Ministers from time to time have been implemented and without delay. The Committee on the Welfare of the Scheduled Castes and the Scheduled Tribes looks into the issues concerning the welfare of the Scheduled Castes and Scheduled Tribes and makes report thereupon.

By submitting petitions to the Parliament through a member, the people can place their grievances before the Parliament with regard to any issue of general public interest and also with regard to any pending bill or matter, thus providing a direct link between the people and the Parliament.

Discipline and Decorum in Legislatures

Nowadays, considerable criticism is being faced by members of Parliament (also of different State Legislatures) about their failure to maintain decorum and dignity of the House. The behaviour and conduct of some members of Parliament and also in many State Legislatures have become a subject of justified criticism and in some cases, of even ridicule and, unfortunately, there is developing more and more an attitude of confrontation than co-operation amongst members which is affecting the smooth functioning of the House.

Members of Parliament cannot run away from the fact that the people, to a considerable extent, are getting disillusioned about the role of Parliament as the highest forum to discuss seriously people's problems and to find solutions. Members cannot abdicate their responsibility for the loss of people's faith in the Parliament, and consequently in the system of parliamentary democracy.

Compulsions of Coalition Politics

There is a growing tendency in the ruling majority to bypass the Parliament, wherever it is possible, to avoid discussion on important issues and to take important decisions without obtaining the views of the Parliament, as for example, making laws through Ordinances, even when there is no urgency. Such an attitude results in greater confrontation between the ruling party and the Opposition, disturbing the even tempo of the proceedings in the House. It appears that the compulsion of coalition politics requiring adjustments, sometimes considered unethical and unmerited, is seriously affecting a more coordinated functioning of the Parliament.

The fractured polity in our country is also reflected in the composition of the Lok Sabha with a large number of parties represented in the House —many of which have no time-tested policies or programmes. The result is that opportunistic or unprincipled post-poll alliances are entered into to form a Government, with no clear mandate or against the mandate of the people, in the name of 'stability' and so-called compulsions of a 'Coalition Government'.

Political Defections

The plea of stability is used on many occasions even to encourage political defections among elected members, against the true spirit of the Tenth Schedule of the Constitution, by adoption of means, including bribery, making a mockery of the system of parliamentary democracy, which, as has been pronounced by the Supreme Court, is a basic feature of the Constitution. To provide a ministerial berth to a defector is to indulge in one of the worst forms of political corruption, very seriously affecting the people's faith in the system.

Criminalisation of Politics

In order to contrive a majority, nowadays help is sought and taken from legislators with a proven criminal record. Many political parties are giving nominations to such persons and even some of them are getting elected, by use of muscle power and money power. Criminalisation of politics is not only polluting the political environment in the country but is also affecting, on many occasions, the smooth functioning of the Legislatures. Strong-arm methods used outside like rudeness and arrogance in behaviour, unprovoked and deliberate interruptions of the proceedings of the House just to attract attention, inability and impatience to hear different view points, making running commentaries during the speeches of even senior members, disobedience of and disrespect to the Chair and even physical obstruction have become too common occurrences, seriously hampering the orderly functioning of the Parliament. Fortunately, such occurrences are still not very widespread, but are sufficient to derail the proceedings. What is disturbing, on such occasions, is the failure or incapacity (if not tacit encouragement) of the leaders of the parties/groups, and particularly of the Leader of the House to intervene to deal with the situation. No doubt there may be occasions when extremely important or serious developments outside the Parliament will have their due reflection inside the House, but those will be not of routine occurrence, as are now happening even on flimsy pretexts.

Probity in Public Life

Out of the misuse of the political system in this country and the failure to exercise governmental power for meeting the people's needs over the years, various aberrations have crept into our body politic which could be contained if laws had been strictly and evenly applied and with transparency. A political system can operate only with dedication and sincerity of the people who operate the system. We have to wage a relentless battle to eliminate all forms of corruption, both political and economic.

Political corruption and communal approach are seeking to engulf our very political and social system and as a result, the rights and privileges which are given to the people in the Constitution are under great strain. It is essential to bring back probity in our political and administrative functioning. Due to the activities of some politicians, a question mark has been raised about the credibility of the politicians as a whole. To deal with those elected representatives who ignore the interests of the people and are guilty of malfeasance and improper behaviour or indulge in corruption and strong-arm methods, it is essential to introduce the system of "recall", which several political parties have been advocating.

All will have to work for achieving the primacy of the Constitutional goals and for commitment to legal and Constitutional methods. As a nation, we are suffering from lack of accountability. There is an impression that has gained ground that criminals with recourse to resource and influence can remain out of the reach of legal processes and there are doubts also about the proper enforcement of our criminal justice system. We have scores of scams and corruption of different hues. It is only by commitment to Constitutional objectives that we can bring back probity into the system.

Parliamentary system of Government is one of the basic features of our Constitution like democracy and federalism, and our endeavour should be not to change the system with the inevitable danger of authoritarianism thwarting democracy but to make the Governments more accountable, where solution of the people's problems and providing them wherewithals will be the primary responsibility.

After more than fifty years of freedom from colonial rule, we are unable to meet the basic needs of about four hundred million people, who live below the poverty line, and who do not have even food, clothing, shelter, health care and education. In fact, the number of poor people in the country today is larger than the population of India at the time of Independence and these are our countrymen whose interests should have priority and primacy. In view of the complexities of the problems and to solve these problems facing the country and the people, to my mind, there is no alternative to parliamentary democracy with adult franchise and a federal set up.

Conclusion

The common people of this country have waited long. The country has resources and the ability to grapple with the problems: what is needed is a commitment to the people's rights, to democracy and true federal structure. There can be no substitute to transparency and accountability and a relentless war has to be waged against the nexus between crime and politics.

The Constitutional provisions and the laws made thereunder are required to be implemented with commitment to serve the people for whom they are meant. The resources of the country and the fruits of development cannot be arrogated by small sections of the people for themselves. Political parties with a common programme must develop the culture of working together, as the era of coalition is expected to continue. The fight against forces of disruption, communalism and fundamentalism and against poverty and obscurantism and against exploitation will be long drawn but can be won with confidence in ourselves and there is no other place to do so adequately and effectively, than in our Parliament.

LEGISLATURE—A POWERFUL FORUM OF CO-ORDINATION BETWEEN THE PEOPLE AND THE SYSTEM*

Digvijay Singh

Introduction

"Parliamentary democracy demands many things, demands, of course, ability. It demands a certain devotion to work as every work does. But it demands also a large measure of co-operation, of self-discipline, of restraint. It is obvious that a House like this cannot perform any functions without the spirit of co-operation, without a large measure of restraint and self-discipline in each member and in each group". This profound statement of Pandit Jawaharlal Nehru underlines the role of a people's representative and his duties in a parliamentary democracy. Now, when we have already completed 55 years of Independence, it has become necessary for us to have a look at the role of Legislatures and their working in our democracy. It is also necessary because Legislatures play a great role in strengthening democracy.

When our Constitution laid down the Directive Principles of State Policy for the governance of the country, it also provided for the creation of Legislatures as the controlling units of the system. In our democratic system, the States have been given enormous powers. To control the system, it was necessary that there should be a superior body of the people to ensure accountability of the Executive to the people in the larger public interest. But I feel that even after 55 years of Independence, we have not been able to define democracy in the right sense of the term. We have adopted the democratic system prevailing in several other countries, including Britain, but we have not been able to make it conducive to our country's realities. During the last 55 years, we have not been able to adequately comprehend the basic spirit of democracy and have been engaged in giving it a mechanical shape. This has created a widening communication gap between the people and the system and a constant declining trend of sensitivity in the system, resulting in disenchantment with the system. Taking advantage of this, some elements have started indulging in anti-establishment activities. Today when we witness terrorist activities and experience Naxalite problems in some States, we can mainly attribute it to our failure to establish a closer relation between the people and the system.

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*This is a translated version of the original article received in Hindi.

Legislature : A Multi-functional Institution

Democracy has to be defined as a system of self-governance by the people. Legislature is an assembly of people vested with the power of enacting laws. Apart from this, Legislatures have several other responsibilities which have direct relations with the citizens. In fact, the main responsibility of the elected House is to keep a check on the Executive and to make efforts for the uplift of the people through better governance. Legislatures are governed by the system of collective policy formulation. The common people derive inspiration from the conduct and behaviour of the legislators. The sanctity of the Legislatures lies in the fact they represent people's sentiments and create a conducive atmosphere for their economic, social and political uplift with total commitment.

The role of Legislatures is equally important in the skilful operation of the democratic system because apart from enacting laws, they protect the basic principles of democracy also. In fact, they have a dual role. On the one hand, they enact laws and on the other, they act as independent units wherein each member projects the interests of the people, especially people's hopes and aspirations. The main function of the Legislature is to discuss the policies and to refine them so that the people at large can be benefited by their implementation. Legislatures create unanimity by establishing co-ordination between the majority and the minority. Members of the Legislature are individually as well as collectively responsible for the fulfilment of people's aspirations, which is also necessary for strengthening democracy.

Gandhiji had said that no system should stand like a *minar*; rather, it should be like sea, where all beings live together. Today when we look at our system, we get a feeling that our system has become like a *minar*; the need of the hour is to make it like the sea.

The main objective behind the constitution of the Legislatures was that they should make the system people-friendly. This forum should consider making such rules and laws which help the people. In fact, in a democracy, this supreme institution of the people is its soul. It is the forum which expresses the voice of the people and whatever system emerges from here encompasses in its fold the expectations and the hopes of the people.

Committee System

The various Committees of the Legislature functions as 'Little Legislatures'. These Committees, which derive their powers from the Legislature, itself have an important role to play. The Committees are a bridge between the system and the House which controls the system and guides the House. The Committees on Public Accounts, Estimates and Public Undertakings control the Executive in financial matters. These Committees undertake in-depth studies to ensure that the amount sanctioned by the Legislature for public welfare schemes and governance is being utilised properly. Committees also reprimand the Executive for any shortcoming or negligence on this account. The Committee on Petitions, constituted to consider petitions received through people's representatives on social issues like the welfare of the Scheduled Castes and Scheduled Tribes, women and child development, etc. contributes towards making the role of Legislatures more effective so as to strengthen democracy and make it meaningful. If these Committees undertake more and more field studies and make assessment of various schemes and programmes and give appropriate guidance, it will certainly speed up the implementation of the developmental and public welfare programmes and bring transparency in the work. Therefore, there is a need to make these activities public-oriented by further strengthening the Committees.

The need of the hour is that we should take a critical look at our parliamentary behaviour in the larger interest of democracy. A legislator is not only the representative or agent of his voters or constituency but also their elected leader in whom they repose their confidence; they also consider him as their well-wisher and guide. In order to enlarge the mass base of democracy or in other words to strengthen it, it is the duty of a member of the Legislature to keep in touch with the constituents on important issues to create awareness among them and gain their support towards his point of view. He should, however, make sure that the interest of the locality or the region or any particular class of society is not given such a boost which would affect the justified rights or interests of other regions or classes. In such a situation, our democratic values and public confidence in our Legislatures will become stronger and stronger.

In fact, the foundation of democracy depends on the functioning of Legislatures. The majority party has a heavy responsibility because the nature of the governing system is ultimately based on its thoughts and vision. The Opposition plays a very significant role in this whole process. Pandit Nehru had remarked that he had full faith in any such system of governance wherein the Opposition had a role to play, because without criticism people could become inactive and Government would detract from its duties. Prophetically, he added that the entire system of parliamentary democracy is based on criticism. I too subscribe to this view. But instead of being politically motivated, criticism should be issue-based as after all, it protects the interests of the people. We have elections to settle our political and other issues, and moreover, there are fora other than the House for political battles; that being so, Legislatures should not be used as the battlefield of politics. Rather, it should concentrate on healthy discussion and the welfare of the people.

Democratic Decentralisation

As I said, Legislatures are institutions which provide a sound foundation to our democracy. They determine its form and future. Our Legislatures are holy institutions and we should fully utilise these fora in the same spirit. I would like to cite the example of the 73rd and 74th Amendments to the Constitution. Through these Amendments, we can bring revolution in the entire country by allowing people's participation in the process of development. This one innovative idea of late Rajiv Gandhi gave a fresh lease of life to panchayats and local bodies which are the basic foundations of democracy and it gave a new direction to our democracy. It is a vision which should be implemented whole-heartedly and with determination by all the States. The State Legislatures have a significant role to play in this regard. In Madhya Pradesh, through this Act, we have given a new vision and now the fundamental changes are perceptible in the system of governance. Democracy has taken root in each and every village. This one Act of Parliament has changed the entire scenario of the State and within no time, millions and millions of people have become directly or indirectly a part of the power structure. I feel that if we want to provide a meaningful foundation to our democracy and create an environment of consensus in which everyone has a role to play and contribution to make, then we will have to ensure large scale participation of the people in the administration. We have done it in Madhya Pradesh with encouraging results.

The Madhya Pradesh Experience

Our new decentralised system in Madhya Pradesh has initiated a revolutionary change in every field. A new awareness has grown among the people and now they know what their rights are and what their duties are. Scheduled Castes, Scheduled Tribes and women and the weaker sections of society had never ever thought that they would be in a position where they would have the right not only to decide their future but also to lead others on the path of success and development. A new chapter of economic self-reliance has been written by women in Jhabua. In this tribal dominated area, women have launched a banking system involving crores of rupees through *Bairani Kudli.* Women have saved crores of rupees in the entire Madhya Pradesh through self-help group schemes. Women of backward areas in the remote villages have come out of the confines of their homes. Now they are *Sarpanchs,* District Chairpersons, District Panchayat Chairpersons and Mayors. They are discharging these responsibilities quite efficiently. The feeling of self-respect among Dalits and women is exemplary. The people of Madhya Pradesh have displayed not only the power of their vote but also their developmental skills in the field of people's participation. Various efforts like Joint Forest Management, Patient Welfare Committee, *Shiksha Guarantee Yojana, Padhna-Badhna Andolan, Pani Roko Andolan* have been encouraged by the State administration in Madhya Pradesh. We are now confident of the development of Madhya Pradesh as not only the administration, but the people are also associated with it. The forest area in Madhya Pradesh has increased during the last five years. This increase has been delineated through the satellite. Modern medical facilities have been extended in hospitals and with the initiation of the *Padhna-Badhna* and *Shiksha Guarantee Yojana,* Madhya Pradesh has registered 20 per cent increase in literacy rate as per the census held recently. We have an edge over Andhra Pradesh in literacy and we are also ahead of States like Punjab, Haryana and Karnataka in the matter of male literacy. Literacy among women has also increased, but we still have to touch the national average in this regard. With the movements like *Pani Roko Andolan,* people have acquired unprecedented confidence to combat and solve their problems. With this spirit, we would be able to provide a strong foundation to democracy. It is only the State Legislature which has encouraged us to give the present democratic shape to the entire State of Madhya Pradesh and it has also ensured public participation in all such schemes. It is again with the cooperation of the Legislature that we enacted such laws and rules which establish coordination between our administrative machinery and the people. Democracy gets consolidated when the common masses find themselves closer to the institutions of governance which is democracy in real terms.

Today, our responsibilities as peoples' representatives have increased when we find terrorists, Naxalities and communal forces raising their heads. It is the primary duty of the political system of the day to control them. We should create an atmosphere and instil confidence among the people so as to foil the evil designs of these forces and rout them. In fact, Legislatures are policy makers in a democracy. The Legislature is like a painting brush and the members of political parties representing the people are like the different colours. Now it depends upon them as to how they mix the colours so that the picture of our democracy could be fascinating, beautiful and reflective of the feelings and aspirations of the people.

Lastly, democratic institutions should be duly respected and honoured so as to strengthen democracy. We must remember that the shape of democracy depends upon the merits and demerits of those persons who represent the common people in the Parliament and State Legislatures from time to time. Today, while analysing the successes and failures of democracy, we should also analyse our behaviour, qualities, self-discipline and commitment to our duties because these are the principles which Pandit Nehru considered necessary for every citizen, particularly people associated with politics, for the success of parliamentary democracy. Have we been able to develop our personality as per these principles? At the outset, I quoted Pandit Nehru to stress that several qualities like honesty, co-operation, self-discipline and self-restraint are required for a successful parliamentary democracy. These are the positive qualities we need to imbibe if we are to prosper as a successful parliamentary democracy.

ROLE OF MEMBER AS AN INTERMEDIARY BETWEEN CITIZENS AND THE GOVERNMENT

Bhai Mahavir

> "Thus I live in the world rather as a Spectator of mankind, than as one of the species, by which means I have made myself a speculative statesman, soldier, merchant, and artisan, without ever meddling with any practical part of life."
>
> *Joseph Addison*

The above might sum up the philosophy of some type of statesman, speculative or otherwise, but a modern statesman can hardly afford to live in such a cool, dispassionate and detached world. He is the carrier of the dreams and aspirations of his people and he has to be an active change-agent for converting these dreams and aspirations into reality. Modern democratic institutions and processes are the tools through which he discharges this major area of his responsibilities.

In 1863, Abraham Lincoln said "...that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, and for the people, shall not perish from the earth". His assertion has turned out to be prophetic. The last half century has seen the spread of democracy the world over. Bill Clinton, the former US President, recently pointed out this phenomenon in an interesting remark. He said that a very large number of people around the globe today were being governed by Governments elected by them. This has never happened before in the history of mankind. However, the worth of any system of governance can be judged only by the benefits it brings to the nation and its people and democracy is no exception to this. That being so, a major responsibility dwells on parliamentarians to use the State apparatus for the uplift of the poor and needy sections of society.

Role of Parliamentarian

There are a number of ways in which a parliamentarian is able to discharge this important responsibility. In his primary role as a law maker, he has a great opportunity to translate the needs of society in terms of legislation. Various parliamentary instruments at his disposal—e.g. questions, motions and debates—enable him to be the watchdog of public interest and to enforce accountability of the Executive. The mechanism of Consultative Committees of the Ministries allows him to participate in the process of policy-making and consensus-building. His privileged position gives him easy access to the Ministers and civil servants enabling him to short-circuit long bureaucratic channels and to bring peoples' problems directly before the top rungs of the Government. The success in projecting the grievances, needs, problems and expectations of the people before the State apparatus and obtaining redressal for them is limited solely by the initiative, skills, knowledge and perseverance of the parliamentarian.

Parliamentarian as a Mediator

There are a number of issues concerning the role of a parliamentarian as a mediator between the citizens and the Government. Quite often a parliamentarian is approached by the people in connection with their cases pending before various authorities. They want him to use his good offices with authorities for obtaining some favour. The culture of 'recommendations' has flourished so much in our country that most, if not all, people sincerely believe that a recommendation from a powerful source is the *sine qua non* even for routine matters. Many party workers nurture the impression that the use of political power to bend rules and violate norms is quite an 'in thing'. The absence of transparency in decision-making processes in Government working has also contributed to such a public perception. What should be the role of the parliamentarian in a situation like this? Hard as it is to resist the temptation to help people close to him and to earn their good will, it is important to realise that the long term interest of the nation demands that our public institutions should not only become equitable, objective, fair, impartial and invulnerable to pressure but should also be seen as such by the people in general. Once that comes about, there would be no need for anybody to bring a 'recommendation' for his legitimate work since even the most poor and powerless will have assured justice at the hands of the State. But that is not all. Even when one does get justice, the rule rather than the exception unfortunately is that its essence is marred by delays—delays which frustrate the very objective and bring it to nought. It is not enough for the proper objective to be realised; it has to be achieved speedily. And for that again, one may require the member to "put in a word".

Ridding the air of all this—if at all possible—will involve a long haul. An all round self-restraint coupled with a sustained campaign will be required for this goal to be advanced. By adopting this policy, the parliamentarian may incur some displeasure of his constituents initially, specially so among the self-serving people crowding around him with an eye on the spoils of power, but once he is able to put things in the correct perspective before his people, he will earn the respect of the vast majority of his electorate.

A number of Government employees also approach the parliamentarian, seeking various kinds of favours in their service matters, e.g. in the form of getting or escaping transfers, lucrative postings, promotions or for influencing disciplinary proceedings regardless of the fact that such canvassing is a breach of service conduct rules. It must be recognised that there are set norms, procedures and fora to consider the cases of Government employees. Further, there are elaborate arrangements to treat individual grievances of civil servants. External interventions in the service matters of Government servants, howsoever good the faith in which they are made, tend to breed indiscipline among them and corrode the neutrality of the civil service which is a vital wing of any successful democracy. A parliamentarian should be well advised to discourage such pressures.

Concentrating on Causes of Problems

There is another aspect of this matter. For a parliamentarian, it is important to devise a strategy which will enable him to remain in contact with and remove the grievances of as many people as possible in the time available at his disposal. He will not be able to accomplish much if he starts taking up individual cases. A simple arithmetic will illustrate this. Even a real go-getter parliamentarian would not dream of being able to obtain relief in more than five individual cases in a day. Even if he is at it for his entire term of say five years (for a member of Lok Sabha) and is exceptionally and consistently fortunate, he will never be able to cross a figure of nine thousand. Actually, given the level of complexities of procedures and multiplicity of decision-making levels—not to speak of rampant corruption in our administrative systems—a more realistic estimate would not be more than ten per cent of this. It is clear that with this kind of approach, the parliamentarian would be able to serve only a very miniscule fraction of his electorate. Moreover, for each one of his successful interventions, there would be ten failures and the parliamentarian would find that at the end of the day, there were more disappointments and grouses than cheers to his credit.

It would be a lot more efficacious to concentrate on causes rather than attending to their consequences. This involves analytical study of problems to determine their root causes which have led to the grievances in the first place. Such an exercise would readily reveal the areas of failure or deficiency of existing policies or implementation systems and suggest the strategy for improving the system. For example, the need of the hour could be the setting up of new structures and laws to meet new situations or transforming the existing ones to make delivery systems prompt, effective, responsive, just, fair and reasonable. Or it could be introducing greater transparency, objectivity and accountability in the administrative machinery, or enhancing public participation and supervision in the planning and/or implementation stages. If one proceeds in a systematic manner, one can help to usher in fundamental and lasting changes in the system of governance whose benefit will not be restricted to some individuals alone but will be reaped by the whole society.

Rising above Pre-poll Rivalries

The second issue which a parliamentarian often faces is what attitude to take in respect of problems brought up by or pertaining to people who are either his political opponents or are politically neutral. Here he would do well to realise that once the election is over, he is supposed to represent all citizens in his constituency, be they his supporters or otherwise. He has to rise above pre-poll rivalries and not restrict his concerns to his supporters alone because other segments of the electorate also are equally entitled to his leadership. Apart from this ethical consideration, even on pragmatic considerations, it would be political short-sightedness on his part to ignore any other genuine issues of people as it might let somebody else hijack those issues with consequent loss of goodwill to him in political terms.

Increasing Maturity of Democratic Process

Democracy in our country is getting more mature with the passage of time as a consequence of the improvements in economic and social conditions, better and faster information technology and a steady rise in political awareness among the people. Elections in the past have been dominated by caste considerations, party affiliations and vote banks. The new trends point to an era of issue-based elections. Large segments of electorate are increasingly using elections as occasions to express their political choices which may not reflect affirmation of party loyalties. Alternating fortunes of political parties in successive General Elections to the Lok Sabha and State Assemblies are indicative of the fact that elections can no longer be won on the latent strength of their supporters alone and hard work is required to swing the public opinion from one side to another. Consequently, one can ill afford to let go opportunities to seize initiatives in public life.

As a Propagator of Government Policies

The third issue concerning the role of a parliamentarian as a mediator between citizens and the Government relates to their role in the propagation and implementation of the Government policies and programmes. How can a parliamentarian carry out this role effectively? Here, he has to realise his immense potential to do good to a very large number of people in his constituency. Since he has an opportunity to be equipped with varied information and data about Government policies, programmes and schemes, he is in a unique position to pass it on to people and help them avail of the opportunities offered by such schemes and programmes.

Ensuring Speedy Implementation of Welfare Schemes

A large number of Government schemes are beneficiary oriented, that is, they are designed to provide direct assistance to individuals in contrast to area development schemes which benefit the society as a whole. Some of the important beneficiary oriented schemes sponsored by the Central Government at present are *Swarna Jayanti Gram Swarojgar Yojana* (rural self-employment programme), *Pradhan Mantri Gramodaya Yojana, Gramin Awas* (rural housing scheme), *Annapurna* (providing food security to indigent senior citizens), *Swarna Jayanti Shahari Rojgar Yojana* (urban self-employment programme), urban housing scheme, *Swayamsiddha* (integrated self-help group based programme for the empowerment of women), *Kishori Shakti Yojana,*(improving nutritional and health status of girls in the age group 11 to 18 and providing required literacy and numerary skills), *Swadhar* (helping women in difficult circumstances, e.g. widows, destitutes, women prisoners and migrant workers by providing shelter, basic amenities and vocational training to them), *Prime Minister's Rojgar Yojana* (financing setting up of micro enterprises to generate employment for educated unemployed), *Antyodaya Anna Yojana* (providing highly subsidised food grains to the poorest of the poor sections of society), etc. Often, one finds that many of the provisions made in such beneficiary oriented schemes remain under-utilised because of the lack of awareness among the beneficiaries and the apathy of the administrative machinery charged with the implementation of these schemes. In many cases, the benefits of these schemes are cornered by ineligible persons, leaving the needy people high and dry. Actually, over the years, the Central and State Governments have developed schemes to address the needs of almost every disadvantaged group in the society and yet, due to lack of proper publicity and sincerity in implementation, the results are usually below expectations. A member of Parliament, armed with the knowledge of such schemes, a passion for helping the people he represents, a healthy influence over the administrative machinery and rapport with his electorate, is well placed to ensure the effective and speedy implementation of these schemes and to help innumerable persons in his constituency to improve their lot.

Conclusion

By raising vital questions and through participation in parliamentary debates, discussions and Committee work as also through his interaction with the Ministers and senior civil servants, a parliamentarian becomes aware of the national and State level issues and priorities and also acquires a wider vision in public matters. At times, a local view of things comes into conflict with the State or national perspectives. In such a situation, his wider vision places him in a unique position to explain different implications of the situation to the people and to assist in bringing about a harmonious resolution of problems. Irrespective of his political affiliation, he should lend his whole-hearted support to the implementation of programmes of national importance, for example in areas like literacy, health, nutrition, soil and water conservation, forest conservation, etc. His active participation and leadership in the implementation of these programmes will give a boost to public participation in such programmes which is important from the point of view of achieving a better performance, both in qualitative and quantitative terms. I would like to conclude with a couplet from Adam Lindsay Gordon:

Life is mostly froth and bubble,
Two things stand like stone,
Kindness in another's trouble,
Courage in your own.

PARLIAMENT AND THE SOCIETY

Anadi Charan Sahu

When one ventures to write on the Parliament and society in the Indian context, one is reminded of the pluralistic society that we have since time immemorial. Our pluralism comprises multifarious ideals, goals, languages, religious beliefs and regional aspirations; it also reflects the political hues not strictly adhering to the concept of party ideology and affiliation in a democratic set-up. In the modern context, there are many political parties which have imbibed the spirit of priest-kingship of the bygone ages. The concept of priest-kingship has cast a spell over their followers in many inconceivable ways. The spell could be to remind them of the customs, beliefs, affinities or even antagonisms of their group. It also weaves a charm around the followers by distorting history or interpreting the scriptures or holy books to show their own supremacy in a pluralistic society of faiths. There are, however, some political parties which have been striving for harmony in an otherwise diverse Indian society. Their attempts have paid rich dividends but over-zealousness and misplaced sympathies have occasionally torn the fabric of political and social understanding. The myopic vision of some leaders has also caused dissensions in the minds of the people.

Aspirations, confusions, achievements and expectations of the society are amply reflected in the Parliament of India. The compulsions of reality that prevailed in India before the Constitution was framed and enacted in November 1949 have been taken into account. There was an attempt by the British rulers to fan discontent among groups by the introduction of dyarchy through the Government of India Act of 1919. Even the Government of India Act of 1935 drove a wedge between the haves and have-nots, the literate and the illiterate by prescribing qualifications for being a member of the electorate. The events leading to the partition of India and the violent aftermath of the division of the country further created dissension and suspicion among the people. But there was also a hope in different sections of society that India would emerge as a tolerant democracy.

Changing Dimensions of Successive Parliaments

All these physical realities, mental agonies, ecstasies and hopes for the future were reflected in the Parliament of India. The First Lok Sabha was constituted in 1952 with the election of representatives without the consideration of caste, colour, creed, culture, wealth or education. Adult franchise, as enshrined in the Constitution, was utilized to elect a group of people who were an epitome of the Indian society and a true reflection of the wishes of the people living in urban, semi-urban, rural and the remotest areas of the country.

The idealists who had brought Independence, the tolerant leaders who did not consider it appropriate to turn India into a theocratic State, and the visionaries were, perhaps, influenced by the last *Sukta* of the last *Mandala* of the *Rig Veda* which proclaimed to the world that there should be one imploration, unison of views in congregations and cooperation in society in achieving the common goal.

The Preamble of the Constitution solemnly resolved to constitute India into a Sovereign, Socialist and Democratic Republic. Democracy materialised through the First General Elections of 1952. As far as the socialistic pattern of society was concerned, the society has had high expectations which were reflected by eminent leaders like Jayaprakash Narayan, Acharya Kripalani and Asoka Mehta. Pandit Nehru, the idealist, was the brain behind the socialistic order. The successive Parliaments from 1952 to 1967 enacted laws to give the society justice, liberty, equality and fraternity. The downtrodden, the oppressed and the marginalised expected many more concessions from the Parliament with a view to being considered important in society. The reservation policy embodied in the Constitution was extended from time to time. The political parties in power or out of power worked for the uplift of the downtrodden by providing props to make them stand up and face the challenges of an unequal society.

The society, however, expected much more. The secular fabric of the nation was getting frayed here and there. There were growing demands from within the society to ensure and assure the minorities of the abiding pledge of the people to the secular character of our parliamentary democracy. In ensuring a secular society, the people also expected that fissiparous tendencies raising their monstrous heads should be sternly dealt with and the society assured of a united India. The Parliament, in keeping with the mood of the people for religious tolerance, amended the Constitution through the Forty-second Amendment Act in 1976 to incorporate "Secularism" in the Preamble of the Constitution. This was nothing but a reiteration of the famous sayings of Guru Gobind Singh, the English rendering of which reads: "The temple and the mosque are the same, the Hindu and Muslim forms of worship are same, all men are same, although they appear different under different influences".

Parliament has been reflecting on finding solutions to frayed tempers, broken promises and disenchantments. It has also been soothing the bruised feelings of the wronged and at the same admonishing the wrong-doers. At times, the Parliament has come down heavily on perpetrators of organized crime and disrupters of public order. In spite of misgivings in some quarters and some narrower viewpoints, the Parliament debates, over the decades, indicate collective wisdom which, in retrospect, sound like the ring of India's history. It is a fact that historically India being a witness to the influx of different cultures has remained inescapably affected both positively and negatively in its religious and community behaviour patterns. The secret of the success of our parliamentary system lies in the deep faith of the Indian society in democracy and its visible symbol, the Parliament.

The country also witnessed the maturity of its electorate which voted out those who imposed emergency in 1975. The same voters also overthrew those who were elected in their place with the onerous task of undoing the wrongs of the emergency. And, those who had been overthrown earlier for their misdeeds were firmly put on the saddle to lead the country in later years.

Equitable Social Order

The society's wishes were reflected in the Parliament in more ways than one. In the early years of Independence, the society had demanded an equitable social order—an opportunity for one and all to get equal status and opportunity in an otherwise feudalistic society where the well-to-do, the upper strata of the society, appropriated for themselves the best of opportunities in education, trade, commerce and agriculture. Parliament was aware of the iron-clad system that helped the rich to the detriment of the poor. A number of social and welfare legislations were enacted in the fifties, sixties and the seventies. The society, however, felt suffocated because of a plethora of legislations. It has been aptly said that myrmidons of law are much more troublesome than the myrmidons of religions. The society felt enslaved by 'bureaucraft' and 'expertcraft'. To redeem the situation, Parliament facilitated various corrective measures. In a civilised society, there should not be a constant fear of the law enforcing agencies. India has shed the shackle of feudalism and she requires the least infringement in local, fiscal and procedural laws. Hence the wishes of the society and the people have to be appreciated and acted upon.

But, whenever it was felt that the political leadership has failed in translating the wishes of the society through strong and effective steps in Parliament, the society stepped forward to make vehement criticism of such leadership and questioned its efficacy. Be that of issues like corruption, the case of Shah Bano, issues relating to the implementation of the Mandal Commission Report, the Ayodhya issue, militancy, terrorism, etc., the people sought to influence the political leadership in various ways. This also led to even changing the very composition of the Parliament. The last four elections to the Lok Sabha projected a fractured will of the people. Herein lies the dichotomy: the society has failed in providing a firm mandate to Parliament and in the process, the Parliament has suffered; this does not augur well for the country.

It is the Parliament that reflects the pulse of the society and if the society sends wrong signals, naturally the Parliament suffers in the process. That being so, society has to facilitate the work of Parliament to be the champion of its cause. Both could derive inspiration from the Buddhist treatise, *Lalita Vistara,* which says:

His works of power shall put to flight,
the dull array of leaden clouds,
which helpless mortals' vision shrouds,
and clear their intellectual sight.

PARLIAMENT AND POLITICAL CULTURE

Anant Gangaram Geete

Introduction

What does political culture really signify? It is a synthesis of the micro-macro social, economic, cultural and political processes that determine the course and direction of a polity. It represents in totality the dynamics of a political community, and its political system. At the same time, a salient feature of political culture is that the political elite and statescraft act as the elemental functional tools to lay down the parameters and contours of political culture.

Before we embark on a critique of the development of political culture in India, it may be apt to look at the global spectrum. In USA, the succeeding generations of Presidency and other governing elite (the Congress, the Supreme Court and political parties) have moulded its political culture to make it a pre-eminent world power. In UK, its Anglo-Saxon political culture bears imprints of a continuous chain from the Magna Carta through the Glorious Revolution. In Japan, the Meiji Restoration (1868-1912) saw a major transformation of the Japanese polity, while China is shaping its political culture wearing a strong Confucian veneer. The significant aspect to note is that none of these polities have discarded their ancient tradition and value system in their quest for a great future. Moreover, as a point of reference, these countries represent stable societies.

Development of Political Culture in India

When the Constitution of India was framed, the founding fathers had before them the ideals and ethos of the Independence movement, embedded in cultural and spiritual nationalism, and the concept of a lofty and sublime polity. At the same time, there was before them the wounded national psyche flowing from the partition of the country. It was a moment of "Tryst with Destiny" for the Indian leadership and its people. Notwithstanding the agony of partition, we did not forsake our ancient traditions. The political culture that our Constitution envisaged was designed to serve the people of India and it was to be the basic framework by which the political, economic and social life of the nation was to run. The Constitution represented the vision of a great future for the Indian people. It was the stability index of the nation and the instrument of socio-economic change; it was a thematic document with a national philosophy. Dr. B.R. Ambedkar had poignantly remarked that if the Constitution did not work satisfactorily at any future time, we would have to say not that the Constitution had failed, but that man was vile. Alas, man did turn vile—we are not being true to our constitutional heritage and national ethos.

In the formative years of the post-Independence era, the course of political culture was, by and large, determined in the Nehruvian mould. It has to be accepted that Nehru did show a great passion for shaping a stable and futuristic Indian polity with an abiding role in the global order. He gave a modern, technological and socialist dimension to the development of the country. The technological and economic infrastructure created in the first decade shows the road-map of that dimension. But Panditji's concept was basically of a technocratic and internationalist political culture.

The Indian polity entered its turbulent phase in the wake of the war of political succession in the Congress. The nationalisation of banks, abolition of privy purses, and the supersession of the judges in the wake of the *Kesavananda Bharati case* are parts of a continuous chain in the Machiavellian management of the polity. The declaration of emergency in 1975 was a classic precursor to the shape of a new political culture. However, it would be unfair to overlook Indiraji's potential for strong-willed leadership—India's resounding victory in the Bangladesh war was a manifestation of it. But this was an era of unipolar political culture with 'pursuit of power' as its dominant creed.

The next phase of India's polity can be called nothing but cataclysmic, though it also contains the seeds of re-generation of a political culture based on our national traditions. This phase was like the mythical *Samudra Manthan* in which *amrita* (nectar) and *vish* (poison) were produced simultaneoulsy. This will be the test for Indian statesmanship. We, in the Parliament, stand to be judged in the courts of future history.

In the 21st century, those of us who sit in the hallowed precincts of Indian Parliament need to reflect whether the process of development of political culture in the country is in consonance with our highest socio-cultural and political traditions. The course of our political culture will not only shape our national identity in the new millennium, but also our position and projections in the global order. In that sense, our every step has to be measured, every move has to be calibrated and our vision has to be transcendental.

It may seem difficult to find a universally acceptable formulation of the concept of political culture in view of the diversity of social, cultural, religious and regional cross-currents weighing on our polity, and more so because of our failure to rise above narrow, sectarian interests. Leaving aside semantics, there is before us a very broad and wide pan-Indian canvas to fashion a vibrant political culture which can impart thrust and dynamism to our polity. The present phase of our polity has thrown up the following distinct cognitive trends on the Indian political culture.

Political and Societal Fragmentation

The last decade saw the dawn of caste politics leading to tremendous societal fragmentation in the key Indian States. Caste politics has degenerated, turning upside down the concept of social engineering. Posterity may never forgive us for the societal breakdown unleashed on the country. What is worse, this came handy for a class of intellectuals who invoked India's benign diversity to destroy the concept of cultural unity and nationalism in the country.

Coalition Polity

The second point of concern is the growth of regional parties—in some cases the rise of recalcitrant regional *satraps*. In a federal polity, particularly when we do not have a two-party system, the growth of healthy regional parties should not be viewed adversely. Parliament is now a transformed institution in which every cultural and political colour is visible, but it is more like a patchwork than a national mosaic. What we need is that we should follow the coalition *mantra*. We feel that it is still a nascent experiment for us and in the days to come we will be able to define the contours of coalition polity.

Corruption in Public Life and Criminalisation of Politics

Corruption in public life and criminalisation of politics are the banes of our democratic system, eroding people's faith in the political elite and our institutional framework/organs, including the Executive, the Legislature and the Judiciary. A partisan polity is taking a heavy toll of the efficacy of our parliamentary system. We need to evolve a collective and consensual approach to eliminate this menace. Parliament must address the problem on a priority basis.

Upholding Indian Culture

The great paradox of post-Independence Indian polity has been our failure to prepare a proper module of our political culture. This arises from the basic dilemma as to what constitutes the foundation of India's culture. We talk of composite Indian culture without perhaps knowing its ingredients. The broad contours of Indian culture are fairly pervasive to need a detailed critique. All that needs to be said is that it is time we understood the relative balance and equation in the system of India's political culture. Why should anyone in Parliament or outside take offence to the breaking of a coconut, or lighting of a lamp, or performing an *aarti* at an official function? These are a part of the prevalent Indian tradition. Here, I would like to recall that the SAARC Summit held in Maldives in November 1990 was opened with recitals from the *Koran;* but in spite of the SAARC being an international forum, our Prime Minister, Shri Chandra Shekhar did not display either his disapproval or uneasiness with that ceremony.

Sharing a New World Order

Today we stand on the pathway of a new world order. We are gifted with a growing educated middle class, scientific and technical manpower, ingenious farming communities and skilled technicians and one of the most efficient defence forces. A new economic infrastructure is also taking shape giving hope of economic regeneration in the wake of liberalisation and globalisation. These are our opportunities on which we can build a viable political community with a viable political culture. It is our turn to rise, stand up and be great. The Indian diaspora has also shown that we all have the nerve, wisdom, capacity and genuis for it. Whatever our past frailty, the political elite, the intellectual classes, the media and those who have their hands on the economic levers need to uphold our sublime values and lofty ideals. A nation cannot be built solely in the precincts of the Parliament nor in the corridors of power—we need to create a national psyche and a value culture for it. It is here, that we, in Parliament, can pool our humble efforts.

Conclusion

The *Mahabharata* speaks about the nature of politics, thus:

> *When politics becomes lifeless, the triple veda sinks,*
> *All the dharmas (i.e. the basis of civilisation) (howsoever) developed completely decay.*
> *When traditional State-ethics are departed from,*
> *all the bases of divisions of individual life are shattered.*
> *In politics are realised all forms of renunciation,*
> *in politics are united all the sacraments,*
> *in politics are combined all knowledge;*
> *in politics are centred all the world.*

So, politics is a sublime characteristic of statecraft, not an aggrandisement for power. The *Mahabharata* also tells us that "of all *dharmas* (duties), rulership is the highest in society for all times." And until the rulers know their *dharma* and are sanguine about its observance, we might not see that "Heaven of Freedom" into which Tagore wanted his country to awake.

This is a great ideal for any nation to aspire.

LOK SABHA—ITS ROLE AND FUNCTIONS

Kashiram Rana

Introduction

India is the largest and one of the most vibrant democracies of the world. At the heart of the Indian democracy lies the institution which denotes the democratic values and that is the Parliament of India. As is well-known, India is a federation and a federation involves division of powers among the Executive, the Legislature and the Judiciary. Under the Indian Constitution, there is no rigid separation of powers as among the three organs of the State. However, a policy of certain checks and balances in the scheme of the Constitution serves to maintain the desired equilibrium.

Composition

The Parliament of India consists of the President and the two Houses, *i.e.* the Rajya Sabha or the Council of States and the Lok Sabha or the House of the People. The members of the Lok Sabha are elected directly by the people. As per the Constitution, the Lok Sabha shall consist of not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States and not more than twenty members to represent the Union Territories, chosen in such manner as Parliament by law may provide. In addition, the President may nominate not more than two members to the House to represent the Anglo-Indian community. The maximum strength of the House envisaged in the Constitution is thus five hundred and fifty-two. The total elective membership is distributed among the States in such manner that the ratio between the number of seats allotted to each State and the population of the State is as far as possible, the same for all States. At present, the Lok Sabha consists of five hundred and forty-five members. The term of the House is five years from the date appointed for its first meeting and the expiration of the period of five years operates as its dissolution. The House can be dissolved before the expiration of its full term under certain circumstances: when a Proclamation of Emergency is in force, its term can be extended for a period not exceeding one year at a time and not exceeding in any case beyond a period of six months after the Proclamation ceases to operate.

Collective Responsibility

After a new Lok Sabha is duly elected and constituted, the President invites the leader of the party or parties commanding majority support to form the Government. While the Prime Minister usually is a member of the Lok Sabha, Ministers are drawn from both the Houses of Parliament. The Council of Ministers holds office during the pleasure of the President and the Council of Ministers is collectively responsible to the Lok Sabha. The Ministers are under a constitutional obligation to resign collectively as soon as they lose the confidence of the Lok Sabha. Every Minister holds office during the pleasure of the President and is liable to be dismissed by him, but since the President does so only on the advice of the Prime Minister, this power actually rests with the Prime Minister.

The Government is constituted by the Council of Ministers and the head of the Government is the Prime Minister. There is the permanent Executive comprising the civil servants, experts, technocrats and others forming the administrative apparatus which really helps the Ministers in the formulation and implementation of policies. The Council of Ministers headed by the Prime Minister is the real or the political Executive and the President of India is a formal constitutional or nominal Executive. The political system in the country represents a real fusion of the highest Executive and the legislative authorities. Whereas the Parliament is to legislate, advise, criticize and ventilate public grievances, the Executive is to govern though on behalf of the Parliament. The Executive has almost unlimited right to initiate and formulate legislative and other proposals before the Parliament and to give effect to approved policies unfettered and unhindered by the Parliament and the Parliament has the unlimited powers to call for information, to discuss, to scrutinize and to put the seal of popular approval on proposals made by the Executive. The function of the Parliament is to exercise political and financial control over the Executive and to ensure parliamentary surveillance.

Relative Roles of the Two Houses

The role and functions of the Parliament have been clearly defined in the Constitution itself. As said earlier, the main function of the Parliament is to legislate. The two Houses of Parliament enjoy co-equal powers and status in all spheres except in financial matters and in regard to the responsibility of the Council of Ministers, which are exclusively in the domain of the Lok Sabha. Accordingly, a Money Bill can be introduced in the Lok Sabha only; the Lok Sabha also has the last say as far as the passing of a Money Bill is concerned. The Rajya Sabha has no power either to reject or amend the money Bill as passed by the Lok Sabha and can only make recommendations on it. If there is any doubt whether a Bill is a money Bill or not, the decision of the Speaker of the Lok Sabha shall be final. Further, it is only the Lok Sabha which has the power to vote on the Demands for Grants. The power to pass a vote of confidence in the Council of Ministers also rests with the Lok Sabha. It, however, does not mean that the Rajya Sabha is less important or has a secondary position in relation to the Lok Sabha. Both the Houses have similar powers in case of non-money Bills, matters like impeachment of the President, removal of the Vice-President, constitutional amendments and removal of the Judges of the Supreme Court and High Courts. President's ordinances, Proclamation of Emergency and the Proclamation of the failure of the constitutional machinery in a State must be placed before both the Houses of Parliament. Any disagreement between the two Houses on a Bill other than money Bill or a constitutional amendment Bill, is resolved by both the Houses in a joint sitting where matters are decided by a majority vote and such joint sitting of the two Houses is presided over by the Speaker of the Lok Sabha.

The Legislature of a country is the representative body of the people and in a sense, the trustee of their sovereignty. In its role as a watchdog, it has to ensure that the supreme interests of the people it represents are looked after. The members have to exercise their rights and discharge their responsibilities without fear or favour; they must have the liberty of seeking exposure of any governmental lapses, thus bringing the policies and performance of the Government to the limelight of public scrutiny. The devices available to the members provide them with ample opportunities to make the Government accountable and face scrutiny.

Conclusion

Democracy has taken deep roots in the country and the Parliament can take justifiable pride in its achievements, principally in sustaining democracy. This is borne out by the fact that the thirteen Lok Sabhas so far constituted in the last fifty years, have reflected the supremacy of the will of the people of India. However, the future of parliamentary democracy lies in how we strengthen our democratic institutions. The Lok Sabha reflects the hopes and aspirations of the people of India and it must be the endeavour of those representing the people to uphold the lofty traditions of the institution.

EXECUTIVE ACCOUNTABILITY IN PARLIAMENTARY SYSTEM*

P.C. Alexander

Introduction

Accountability means being bound to give account for things one does or omits to do. Responsibility is another word which carries the same meaning. Continuing accountability or responsibility is the main feature that distinguishes the parliamentary system from other forms of democracy. Dr. Ambedkar, in his speech in the Constituent Assembly, while introducing the draft Constitution had explained the reasons why the framers of our Constitution had decided in favour of the parliamentary system. Comparing the presidential system with the parliamentary system, he said: "You can have a system which can give you more stability but less responsibility. The British system on the other hand gives you more responsibility but less stability". Under the non-parliamentary system such as the one in the United States, Dr. Ambedkar argued, the assessment of responsibility is periodic, being done by the electorate once in two years. In the parliamentary system, on the other hand, the assessment of responsibility is both daily and periodic. The framers of the Constitution preferred the parliamentary system because they believed that accountability in Government was more important to a country like India than the advantage of stability.

When we discuss accountability, we often forget an important dimension of accountability and that is the moral dimension. Accountability is not merely about the efficient discharge of one's duties and functions but it is equally so about good governance. Good governance is not just efficient administration; it also means administration rooted in moral values and ethical principles. Good governance depends more on the philosophy and outlook of the people regarding how they are governed than merely on law, the Constitution and the courts.

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*Adapted from the 'Yashwantrao Chavan Memorial Lecture' delivered by Shri P.C. Alexander at a function organised by the IIPA at the Yashwantrao Chavan Centre Auditorium, Mumbai, on 21 November 2001; reproduced with permission from the author.

I shall deal with accountability in the parliamentary system of India under three broad headings: (i) Accountability of the Legislators; (ii) Accountability of the Executive; and (iii) Accountability of the Judiciary.

Accountability of the Legislators

Sanctity of the Electoral Process

In a parliamentary system of Government, the legislators are expected to remain continuously accountable to the people who elected them and to keep the Executive continuously accountable to the Legislature which, in turn, remains accountable to the people. In order to discharge these two responsibilities adequately, the legislators should have the credibility that they are the true representatives of the people and this depends first and foremost on the sanctity of the electoral process itself. If the electoral process is vitiated, the whole concept of accountability also loses its intrinsic value. Unfortunately, the electoral process has been so distorted and polluted in several States and on several occasions in our country in recent years that the genuineness of the representative credentials of some legislators has come into question. If the number of such legislators had been negligible, this phenomenon could have been overlooked as a temporary aberration which may not affect the concept of accountability. Unfortunately, the trend is for electoral malpractices to be steadily on the increase and this raises a serious question mark on the manner in which accountability of the legislators is enforced.

The trouble starts with the sanctity of the electoral rolls themselves. According to sample household surveys conducted in some urban areas, as many as forty to fifty per cent errors were noticed in urban electoral rolls. These errors included registration of bogus voters and deletion of genuine voters at the instance of interested candidates and political parties and with the connivance of dishonest bureaucrats. The percentage of inaccuracies in electoral rolls in rural areas was estimated at fifteen to twenty per cent. Whatever may be the accuracy of these figures, no one can deny the fact that manipulation of electoral rolls takes place on varying scales leading to the election of some legislators who cannot claim genuine representative credentials. One of the important steps to be taken to ensure the sanctity of the electoral rolls is imposition of stringent and deterrent punishment for those found guilty of such offences. Very often, it is pleaded that a fault-free electoral roll is impossible in a large country like ours but with the availability of modern tools of technology, there can be no validity for such excuses now. The fact is that adequate attention to the preparation of correct and reliable electoral rolls has not so far been given in our country and people often start complaining about errors in electoral rolls only when it is too late for correction.

An equally serious factor which distorts fair and free elections and which, therefore, erodes the concept of accountability is the increasing trend of corrupt practices in elections. Instances of winning election on the strength of money, muscle or mafia power may be relatively few in many States, but to the extent they exist anywhere, they make a mockery of the concept of accountability. The Election Commission had estimated that out of a total of 13,952 candidates who contested the 1999 elections, around 1500 were those who were under prosecution for crimes like murder, dacoity, rape, theft, extortion, etc. Unless both law and public opinion assert themselves very strongly, this evil practice will continue to spread and eventually may subvert the basic principle of democracy, namely, that it is a Government of the people and by the people. Correcting the lacunae in the electoral process and preventing abuse of the election machinery by corrupt and criminal elements are, therefore, the essential first requisites in ensuring accountability of the legislators.

Selection of Candidates for Election by Political Parties

In our country, even the very principle that the elected representatives of the people should remain continuously accountable to the people who elected them is not adequately recognised. On the other hand, the accepted theory appears to be that the accountability of the legislators is primarily to the political party which nominated them as candidates. The erosion of accountability of the legislators starts with the undemocratic process of selection of candidates by political parties for election. The views of the members of the political party in the constituencies often receive the least weight in the selection of the candidates. In fact, there is very little serious effort on the part of some political parties to ascertain properly the wishes of their partymen in this matter. In almost all political parties, selection of candidate is recognised as the prerogrative of the party high command which in effect often means two or three individuals entrusted with the duties of overseeing the party's work in a State. In the United Kingdom, it is unthinkable that a candidate not approved by the party members in the constituency can ever be approved by the party leadership as a candidate. In India, the partymen in some cases come to know who their candidate is only two or three days before the filing of nominations. The candidate's main concern often is to get the approval of the party high command for his candidature and not the pre-election endorsement of the electorate and, therefore, there is little wonder if he interprets accountability to mean only accountability to the party high command.

After getting elected, the accountability of the legislator can become real only if he maintains a continuous contact with people in his constituency. In the United Kingdom, which is the best example of a parliamentary system of democracy, it is a regular practice for the legislators to hold 'clinics' in different parts of their constituencies to discuss with the electorate the issues that come up before the Legislature and to ascertain their views on them or to explain to them how they propose to vote on a particular issue. It is a two-way process of information, getting informed and instructed by the electorate and also informing and educating the electorate. Of course in large constituencies like those for election to the Lok Sabha where one member of Parliament represents about 1.5 to 2 million people, continuous contact with the electorate becomes very difficult. Constraints in transport and communication facilities add to the problems. Still, it is a well known fact that no serious attempt is made by some elected legislators to maintain even a semblance of contact with those who sent them to the Legislature. In many cases, the legislators become conscious of their responsibilities to their electorate only when the next election is announced. In some cases, the candidates even change their constituencies so that they do not have to answer inconvenient charges of neglect of their duties from their constituencies.

Defections

The worst example of lack of accountability of the legislator to his electorate is when he defects from the party which elected him and joins another without any consultation with the electorate. The Anti-Defection Law was intended to prevent the evil practice of change of party loyalties on the part of elected representatives but the law has failed miserably in achieving the objective with which it was enacted. The practice of defection was at its worst between the fourth and the fifth General Elections in 1967 and 1971, when there were nearly 2000 cases of defections and counter-defections from among the 4000 members of the Lok Sabha and the Legislative Assemblies. After the Anti-Defection Law was enacted in 1985, individual defections have become rare but *en bloc* defections have taken their place. In fact, on an average more defections per year took place after the Anti-Defection Law came into force than earlier because of the insistence on requiring one-third of the party strength to make defection a 'split'. In some cases, the Speakers of the Legislatures have tended to act in a partisan manner making it easy for those who wanted to cross the floor to do so. Ideological considerations have played little role in such party hopping sprees and defections have taken place because of the rewards of office. In all these cases, the voters who elected the legislators have remained silent spectators of the farce. The only effective remedy for enforcing the accountability of the legislators to the voters is to make it a law that if any legislator wishes to change his party loyalty, he should go back to the people for a fresh mandate. Disqualification of one who leaves the party on whose mandate he was elected should be immediate and his vote should be annulled automatically.

Another major remedy against defection would be to limit the size of the Council of Ministers to ten per cent of the membership of the House. Once it is known that there is no possibility of getting a berth in the Council of Ministers because of the ceiling on the size of the Council of Ministers, a major incentive for defection will also disappear.

Enforcing Accountability of the Executive to the Legislature

Now I shall deal with the other side of the accountability of the legislator in the parliamentary system, namely, his duty to enforce accountability of the Ministers to the Legislature on a continuing basis. This type of accountability is intended to be enforced through parliamentary instruments like Questions, Short Notice Questions, Adjournment Motions, debates before Votes on Grants, etc. Of late, the trend in many of our Legislatures has been to neglect this important function of holding Ministers accountable through the forum of the House. The time intended for Questions, Adjournment Motions, debates, etc. is often lost due to demonstrations and staging of protests. Rushing to the well of the House, raising placards, getting on to the Speaker's rostrum, shouting of slogans, using microphones and chairs as missiles, etc. have become common features in some of our Legislatures. Demonstrations no doubt occur occasionally in all Legislatures of the world but what should worry us in India is that more time is often lost in protests and demonstrations than in debates and discussions on the floor of the Legislature. Most people take such behaviour on the part of the legislators as a problem of lack of decorum and dignity, or of defiance of the Chair. But this should not be treated as just an issue of decorum or discipline; it is a serious matter affecting the principle of accountability of the legislators. An irony of the situation in some Legislatures is that instead of enforcing accountability through Questions, etc., there is often a demand from the members for dispensing with the Question Hour altogether. Debate on the issue of suspension of the Question Hour itself sometimes takes the major part of the time allotted for Questions.

The most important occasion when the Legislature can effectively enforce the accountability of the Ministers is when the Legislature has to approve the grants for different Ministries or Departments. Unfortunately, discussions on the performance of individual Ministries or Departments have become impossible these days because of the shortage of time available for such discussions as the time of the Legislature is taken up by demonstrations and protests. In Legislatures, which have adopted the Committee System, there is some opportunity for discussion in the Committees concerned. But in most cases, the Demands of only a few Departments are discussed in detail and other Demands are voted without any discussion at all. In 1985 and 1986, the Demands for Grants for fifteen and sixteen Ministries, respectively, were discussed in the Parliament while in 1995 and 1996 the number of Ministries whose grants were discussed was only 2 each, and 5 and 1 in 1997 and 1998, respectively. When Demands of Ministries and Departments are passed without proper discussion on the performance of the Ministry or Department, the legislators are abdicating their primary responsibility to keep the political Executive accountable to the Legislature.

Some times, the entire time of the Legislature is taken up for several days by noisy protests and stalling of the proceedings on a single issue which would have come up before the Legislature or about which some members were not satisfied with the action taken by the Government. This results in the virtual abandoning of debates and discussions on several most important other matters which should have engaged the serious attention of the House. The legislators thus lose the precious opportunity of holding the Executive answerable to the House on such issues. Unfortunately, this type of wasting of the time of the Legislatures is becoming a common practice and the basic duty of the Legislature in holding the Executive accountable gets neglected. While the First Lok Sabha (1952-57) had spent 67.30 per cent of its time to transact legislative and financial business, the Tenth (1991-96), Eleventh (1996-97) and Twelfth (1998-99) Lok Sabhas could spend just 39.54 per cent, 33.26 per cent and 31.28 per cent, respectively, of their total time on these items.

The only effective remedy for this situation is that the Legislature should take strict punitive action against the members who misuse the forum of the House or defy the directions of the Speaker. A mere ban on trouping to the well of the House may not be adequate. Members can continue to disrupt normal working of the House if they wish to do so without going into the well. Punishment has to be prompt and severe for all acts of disturbance of the working of the Legislature or disobedience to the Chair. Otherwise, the precious time of the Legislature will continue to be wasted on protests and demonstrations without the Legislature having the opportunity to discharge its legitimate function of enforcing accountability of the Executive.

Accountability of the Executive to the Legislature

I have already discussed the responsibilities of the Legislature to hold the Executive accountable to it on a continuous basis through various instruments like Questions, Adjournment Motions, etc. The most important instrument of control is approval of the grants sought by the Executive. Since all Money Bills have to be approved by the Lower House of the Legislature, the Legislature, if it decides to do so, can bring down the Government by denying approval for such bills. A no-confidence motion is the ultimate weapon in the armoury of the Legislature to change a Government in which it has lost its trust.

Without having to deny the Demand for Grants by the political Executive or to resort to tabling a no-confidence motion in the Lower House, the Legislature can keep the Executive under continued accountability by its right to have its say on all major policy matters which the Government takes or propose to take. While no clear line can always be drawn between the policy and the administrative aspects in many cases, a prudent Executive always takes care to ensure that it has the support of the Legislature on all major decisions.

Accountability of the Political Executive for the Actions of the Civil Servants

The question whether the political Executive should be accountable to the Legislature for the actions of the civil servants has been well settled through the famous report of Justice Chagla in the case known as the *Mundhra deal* and approved by the Government. The issue enquired into by Justice Chagla was whether H.M. Patel, Principal Secretary in the Ministry of Finance, had acted correctly and with the proper approval of his Minister T.T. Krishnamachari when he advised the Life Insurance Corporation to invest in certain companies of H.D. Mundhra, an industrialist from Kanpur. Justice Chagla held that constitutionally the Minister was responsible for the action taken by his Secretary. T.T. Krishnamachari maintained in his statement before the Parliament that he did not know all facts about the deal and that H.M. Patel was not following his directions or policy in this deal. Nevertheless, he resigned as Minister following the report of Justice Chagla and his resignation was accepted by Prime Minister Nehru.

The Minister's accountability for all acts of the civil servants is based on the theory that decision-making on major issues in a parliamentary system is the indisputable responsibility of the political Executive. The role of the civil servant is to assist the political Executive in taking correct decisions within the framework of law and regulations. There should be no doubt about the source of authority for decision-making in the parliamentary system of Government: it is always the Minister. He derives that authority from the Legislature, and the mandate he gets from the electorate. This does not mean that every file has to move to the Minister for his decision. Administration will become impossible in such a system. Innumerable decisions are being taken every day by the civil servants at various levels of administration without the Minister ever having to know about these cases. In all the countries following the parliamentary system of Government, the practice is that the Ministers keep themselves informed of the important decisions taken by the civil servants while exercising their overall control and guidance. They can overturn the decisions of the civil servants if they are not satisfied that the decisions are in conformity with their policies. All major decisions involving policy are the exclusive privilege of the political Executive, though they take such decisions with the aid and advice of the civil servants.

Two important principles were established through the report of Justice Chagla regarding accountability of the Minister and the civil servant. First, the Minister must fully and squarely accept the responsibility of the decision of the civil servant and cannot plead that he was not fully briefed about it. Second, the civil servant, while taking a decision on his own, should act in a manner which would have ultimately met the approval of his Minister. It is not open to the Minister to disown the decision of his civil servant in the forum of the Legislature if the Minister had earlier not taken any action to annul the decision. If the civil servant feels he has to take a decision urgently and not have the time to take the prior orders of the Minister, he has every right to do so, but he should, at the earliest opportunity, submit the case to the Minister. The civil servant cannot deny the opportunity to the Minister to take his decision in a case on the plea that he was acting in conformity with the Minister's own views in the matter.

The relationship between the Ministers and the civil servants is mainly a matter of trust and, therefore, cannot be always defined by rules and regulations. However, the well-established principle is that the Minister is ultimately accountable to the Legislature for all the decisions taken in his Ministry or Department. The accountability of the civil servant is directly to the Minister and indirectly to the Legislature through the Minister.

Accountability in Coalition Government

Accountability of the political Executive is somewhat different in Coalition Governments compared with that in single party Governments. Accountability becomes a more complicated matter if the coalition has a large number of partners instead of just two or three.

Coalition Governments in India are becoming more and more common because of the difficulties in evolving a two-party or three-party system of Government as in Britain. Sometimes, national parties are forced to the necessity of forming Governments in coalition with political parties which have only a State-level base. Often, coalitions are formed with partners who may not fully share common political objectives or agree on common programmes. Some coalition partners may reserve their right to decide their stand on specific issues based on their own assessment of merits. All these factors can make accountability a difficult problem for Coalition Governments.

Experience in the working of Coalition Governments shows that each coalition partner wishes to remain accountable to his own party rather than to the Legislature collectively. The erosion of accountability starts with the practice followed by political parties in choosing Ministers. In a parliamentary system of Government, it is the privilege of the Prime Minister or Chief Minister to choose his colleagues, but in a Coalition Government, he appoints as his ministerial colleagues nominees of the coalition partners over whom his moral authority is limited.

Coalition Governments by themselves are not undesirable or incompatible with the parliamentary system of Government if they function on the principle of collective responsibility and accountability. However, some unhealthy trends have been noticed in the functioning of Coalition Governments. One is that the coalition arrangement has led to the creation of a vested interest in retaining the separate identity of even very small parties, even though there may be no differences on ideologies. Leaders of such small parties like to maintain their separate identity as political parties in order to get a share in the Government. This type of coalition does not make the Government more representative or more broadbased because leaders of such small parties have very narrow following and do not represent any distinct political base which brings strength or stability to the Government. In many cases, they get elected to the Legislature mainly because of the support of the other coalition partners.

A constitutional remedy I would suggest for this is that no political party should be considered eligible for a berth in the Cabinet unless it has a prescribed minimum number of seats in the Legislature. Otherwise, they should remain partners of the coalition without being Ministers in the Coalition Government.

Another distortion in the principle of accountability and joint responsibility for governance in Coalition Governments is that some leaders of political parties, after becoming Ministers, function as if they are Ministers of a particular State or representatives of a particular party only. They seem to think that it is their duty to give special favours in their power to a particular State or group forgetting that as Ministers they have to exercise their power keeping in view the interests of the country as a whole. They take the oath to do right to all manner of people without fear or favour, affection or ill will, but unfortunately they show more of affection and favour to those whom they consider as their main constituents. This destroys the credibility of the coalition in the eyes of the common people, but there is no constitutional remedy to rectify such misdemeanours. Only respect for morality and concern for good governance can correct such violations of collective responsibility and accountability.

Accountability of the Political Executive for the Working of the Public Sector Entities

The extent of accountability of the political Executive for the working of public sector corporations, financial institutions and nationalised banks is still an undefined issue. The main principle in setting up such institutions as autonomous entities is to give them the freedom and flexibility to carry out their functions without being encumbered by Government rules and regulations or interference by the political masters. While the autonomy of such institutions has no doubt to be respected, one should not overlook the importance of accountability. Heads of these public sector institutions should have accountability to their shareholders, *i.e.,* to the Government, and this means that they should remain accountable ultimately to the people through their elected representatives and the Ministers.

This concept of accountability should not be extended to mean that they should work like Government Departments with day-to-day accountability to the Ministers. Without in any way compromising the advantage of autonomy in such institutions, it should be possible for the political Executive to remain accountable for their acts. However, we have failed so far to strike a healthy balance between accountability and autonomy. Mismanagement leading to bankruptcy or closure as has happened in several public sector institutions or wide prevalence of scams and frauds involving several thousands of crores of rupees as it has happened in the case of the so-called non-performing assets of some nationalised banks are clear instances underlining the need for effective accountability of the political Executives who are ultimately responsible to the people of the country who own these institutions.

Accountability of the Judiciary

There seems to be some confusion in the thinking about the accountability of the Judiciary in a parliamentary system of Government. While the Judiciary cannot be said to be accountable to any other organ of Government, like the Legislature or the Executive, there can be no doubt about the fact that it is accountable to the people of the country. The oath that the judge takes on assuming office says that he will faithfully and to the best of his ability, knowledge and judgment, perform his duties without fear or favour, affection or ill will and that he will uphold the Constitution and the law. This is an oath committing the judge to both efficiency and integrity in the discharge of his duties and if he proves to be inefficient or dishonest, he is betraying the oath he has taken. The weakness lies in the lack of appropriate arrangements for enforcing conformity to the oath and through the oath, accountability to the people.

According to the Constitution, a judge of the Supreme Court or High Court can be removed from office only through a process of impeachment, that is by an order of the President passed after an Address by each House of Parliament supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting on the ground of misbehaviour or incapacity. Under this provision, it is difficult to remove a judge who has been found to be grossly inefficient. Even when gross misbehaviour involving corruption has been established, experience has shown that the constitutional provisions to remove a judge are quite impractical and the corrupt judges can, therefore, get away without any punishment.

If accountability of the judges to their oath of efficiency and integrity is to be enforced, the only remedy will be to leave this responsibility to the judges themselves without having to go through the wholly unworkable procedure of impeachment through the Parliament. A panel of three or five senior-most judges of the Supreme Court should be given the authority to judge the judges.

I am also of the view that there should be greater frankness and transparency in a democracy in dealing with misbehaviour or inefficiency of the judges. People seem to be very reluctant even to express their views on such issues on the ground of respect for the institution of Judiciary. Irresponsible statements about misbehaviour or inefficiency should certainly be discouraged and even punished, but if persons who know the facts directly and well choose to remain silent, it will only serve to shield the corrupt and the inefficient. Many eminent jurists have strongly pleaded for more openness and transparency in dealing with corruption among judges. H.M. Seervai, the well known jurist, said: "When judicial corruption exists (referring to India), it is a subject of rumour or gossip, but not of public discussion or debates. Men seem to act on the maxim: 'Speak about if often, write about it never' ".

Instances of corruption and inefficiency in higher Judiciary may be relatively on small scale but there is little point in not recognising that the problem exists and that it has to be tackled through effective procedures.

PARLIAMENTARY CONTROL OVER MONEY AND FINANCE

Pranab Mukherjee

Introduction

Like in any other parliamentary system, the Parliament of India exercises total control over the Executive in matters relating to money and finance. The Constitution of India deals elaborately as to how this control would be exercised by Parliament.

Parliamentary control over money and finance has three major dimensions inasmuch as it is exercised: (i) by levying taxes; (ii) by approving expenditure proposals of the Executive presented in the form of Demands for Grants; and (iii) by approving the authorization of the Executive to withdraw and spend money from the Consolidated Fund of India.

Constitutional Provisions

The Union Government has two main sources of finance—one, revenue (tax and non-tax) and the other, loans raised by the Government through various instruments. The money received through revenues and by raising loans constitutes the Consolidated Fund of India. Article 266 (1) of the Constitution provides, subject to the assignment of certain taxes to the States, all revenues received by the Union Government, all loans raised by the Government and all moneys received by the Government in repayment of loans shall form one consolidated fund to be called the Consolidated Fund of India.

Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. These taxes are levied by the Union Government through the Finance Bill for each year. Taxes are levied for only one year and that is why it is necessary to get the Parliament's approval on the Finance Bill even if there is no change in the rate of taxes. Our financial year starts from 1st of April and ends on 31st March of the following year. Article 112 of the Constitution provides that the estimates of expenditure embodied in the financial statement shall show separately:

- The sums required to meet expenditure described in the Constitution as expenditure charged upon the Consolidated Fund of India.
- The sums required to meet other expenditure proposed to be made from the Consolidated Fund of India.

So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but each House is competent to discuss any of these estimates.

Clause (3) of Article 112 identifies some of the expenditures charged on the Consolidated Fund of India which are outside the voting of Lok Sabha. These expenditures relate to: (i) the emoluments and allowances of the President and other expenditures relating to his Office; (ii) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People; (iii) the salaries, allowances and pensions payable to the judges of the Supreme Court; and Comptroller and Auditor-General of India; (iv) Pensions payable to the judges of the Federal Court and any High Court; (v) debt charges for which the Government of India is liable; (vi) any sum required to satisfy any judgment, decree or award of any court or any arbitral tribunal; and (vii) any other expenditure declared as charged by the Constitution or by Parliament by law to be so charged.

So much of the estimates as relates to other expenditure shall be submitted in the form of Demands for Grants to the House of the People and the House has the power to assent, or to refuse to assent to any Demand, or to assent to any Demand subject to a reduction of the amount specified therein. However, as per article 113 of the Constitution, no Demand for Grants can be made except on the recommendation of the President.

Parliament's approval is necessary to withdraw any sum from the Consolidated Fund of India and the Executive cannot withdraw any money without such authority. Parliament vests such authority in the Executive by passing the Appropriation Act as per provisions under article 114 of the Constitution. Therefore, the Executive cannot collect any revenue without the approval of Parliament, cannot spend any money—except the expenditure described as charged—without the approval of Parliament and cannot withdraw any money from the Consolidated Fund of India without the approval of Parliament.

Budgetary Procedure

Now, the question is how does Parliament exercise these authorities and what procedures are followed in Parliament? Article 112 of the Constitution provides that "the President shall, in respect of every financial year, cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this part referred to as the annual financial statement".

Formulating the Budget

As per the allocation of business, the Finance Minister is responsible for presenting this annual financial statement before both the Houses of Parliament and this annual financial statement is called the Budget. In our country, the Budget is still shrouded in mystery and a lot of secrecy is being maintained in preparing the Budget. In formulating the Budget the Finance Minister is assisted by a group of senior officers in the Departments of Finance Ministry, *viz.* Secretaries in the Department of Revenue, Expenditure, Economic Affairs, and Insurance and Banking, the Chairmen of the Board of Direct Taxes and the Board of Central Excise and Customs, the Chief Economic Adviser and the Governor of the Reserve Bank of India who is the Principal Adviser to the Government on monetary policies. In addition to these officers, as parliamentary system revolves around the Prime Minister, a representative of the Prime Minister's Office, usually of the rank of a senior Secretary, is also associated with the Budget-making process. The revenue proposals are formulated by the two Boards of Taxes and Revenue Department.

Role of Planning Commission

Normally, the expenditure proposals come from the various Ministries and Departments and these are classified both on revenue account and capital account. These expenditures are further classified as planned expenditure and non-planned expenditure. Since 1951, with the establishment of the Planning Commission, we have evolved the practice of planned economic development. Plan expenditures are determined annually by the Planning Commission in consultation with the Ministries and Departments of the Union Government and also with the Chief Ministers of the States concerned. The Planning Commission makes national planning for the period of five years, makes an assessment of resource availability and recommends means for additional resource mobilization for investment in various sectors as per priorities determined by it to achieve the objectives of the Plan for the five-year period. Though the

Plans are made for a period of five years, these are being operationalised in the annual framework. Plan allocations for Central Ministries and Departments and Central assistance to the Annual Plan of the States and Union territories are incorporated in the annual Budget proposals of the Union Government.

The practice evolved over the years is that the Finance Minister indicates to the Deputy Chairman, Planning Commission, the total amount available for Plan expenditure for the year. Thereafter, the Deputy Chairman, Planning Commission, keeping in view the overall target of the Five-Year Plan figures, determines the size of the Central Plan and the size of the Plan assistance to be provided by the Centre to fund the States and Union territories. After completing this exercise, the Deputy Chairman, Planning Commission transmits the Plan expenditure proposals during the first week of February. Normally, the Finance Minister incorporates these allocations in the Budget. Details of the Central Plan expenditure are provided in the Budget documents. The aggregate amount of Central Plan assistance given to the States is mentioned in the Budget document. Though in the formulation of the Budget proposals, the Prime Minister's Office is kept involved constantly, the Finance Minister himself briefs the Prime Minister in two or three meetings about the state of the economy, size of deficit, size of Plan expenditure and the taxation proposals. The approval of the Cabinet is obtained after briefing them about the salient features of the Budget in a Cabinet meeting normally scheduled one or one and a half hour before the presentation of the Budget.

The Finance Minister presents his Budget proposals to the Lok Sabha in the form of a statement which has two Parts—Part (A) giving a broad outline of the general state of the economy and the general direction of the Budget to be presented and Part (B) containing the details of the expenditure proposals, taxation proposals and the final balance of the receipts and expenditure for the year under review.

Budget Speech

The Budget is just not merely an accountant's scrap book indicating debit and credit alone. The Budget speech of the Finance Minister contains new policy measures and legislative proposals. In fact, many important proposals, including legislation, have been announced in the Budget speech and followed up by subsequent action. The establishment of the National Bank for Agriculture and Rural Development (NABARD), Exim Bank, Expenditure Commission, etc. was first announced in the Budget speech and later on put into operation. Along with the presentation of Budget, the Finance Minister introduces the Finance Bill in the Lok Sabha and places the Demands for Grants on behalf of all the Ministries and Departments of the Union Government before the House. All relevant notifications are laid on the Table simultaneously. In the Rajya Sabha, a copy of the annual financial statement of the estimated receipts and expenditure is laid on the Table of the House by the Finance Minister.

General Discussion and Vote on Account

After the presentation of the Budget, the Houses take up the Budget proposals for general discussion and the Finance Minister replies to the debate at the end of the discussion. At this stage, no voting takes place. Thereafter, the Finance Minister seeks the approval of the Lok Sabha for Vote on Account for a period of two to three months to facilitate the discussions on the Budget proposals in detail even after the expiry of the financial year on 31st March. Article 116 of the Constitution deals with the provisions for Vote on Account. After the approval of Vote on Account, etc., the Demands for Grants in respect of various Departments and Ministries are taken up for consideration and approval of the House. Demands for Grants can be discussed and voted only in the Lok Sabha and not in the Rajya Sabha. Prior to 1992, during the first three weeks of April or after the passage of Vote on Account, the Demands for Grants were taken up for consideration and approval of the Lok Sabha.

Role of Departmentally Related Standing Committees

Since the introduction of the Departmentally-Related Parliamentary Standing Committees, now-a-days, both Houses are adjourned after the passage of Vote on Account, relevant Appropriation Bills and other routine business which are to be completed within the financial year, *i.e.* by 31st March. Thereafter, the seventeen Parliamentary Standing Committees consisting of 30 members from the Lok Sabha and 15 members from the Rajya Sabha, are assigned the responsibility of scrutinizing in detail the Demands for Grants of various Ministries and Departments under the jurisdiction of such Committees. The Chairmen of the Standing Committees have to submit the reports of such examination and scrutiny by the middle of April to both the Houses of Parliament. Thereafter, the Speaker, in consultation with the Leaders of various parties and groups in the Lok Sabha, decides the dates and selects the Ministries whose Demands for Grants are to be taken up for consideration and voting in the House. At the end of it, on an appointed day, in the last week of April, at 6.00 pm, the Speaker puts all the remaining undisposed Demands for Grants to vote in the House. This is called the guillotine.

Cut Motions

At the stage of consideration of the Demands for Grants, members are entitled to move cut motions to reduce the Demand of any Ministry/ Department. Normally, a large number of cut motions are moved by the members of the Opposition. All these cut motions are defeated as the ruling party has majority in the Lok Sabha. Some types of cut motions, if approved by the Lok Sabha, may not only cause embarrassment to the Government but also lead to the resignation of the Government as a cut motion relating to disapproval of any policy of the Government tantamounts to lack of trust in the Cabinet itself. So now-a-days, in an era of strict party discipline, ruling party members remain alert and vigilant to see that such cut motions are not approved by the House.

Passing of the Appropriation Bill

Once the Demands for Grants in respect of every Department and Ministry are voted, the relevant Appropriation Bill is passed by the Lok Sabha to authorize the Executive to withdraw the necessary sums from the Consolidated Fund of India.

Consideration and Passage of the Finance Bill

Once the second stage of the budgetary exercise is over, the final and last stage of the exercise is undertaken which is the consideration and passage of the Finance Bill. The Finance Bill is introduced by the Finance Minister at the time of presentation of Budget and it becomes operationalised immediately; the final approval of the House, however, comes at the last stage of the budgetary exercise. The Bill is considered and passed by the Lok Sabha in the same manner like any other ordinary legislation and, thereafter, the Bill is transmitted to the Rajya Sabha. The only difference is that the Finance Bill, being a Money Bill (as defined under article 110 of the Constitution), cannot be introduced in the Rajya Sabha and the Rajya Sabha must return the Bill with or without any amendment within fourteen days of its receipt from the Lok Sabha. The Rajya Sabha cannot withhold the Bill beyond fourteen days and its amendments to the Finance Bill are subject to acceptability by the Lok Sabha. If the Lok Sabha decides to reject the amendments proposed by the Rajya Sabha, then the Bill is legally presumed to have been passed by both the Houses in the same form as it was passed in the Lok Sabha originally.

Parliamentary Control over Finance : Some Issues

A question arises here that if the taxation proposals, especially indirect taxes, become operational from the moment the Finance Minister introduces the Finance Bill in the Lok Sabha, then what type of control can Parliament exercise? Members have not yet seen and studied the Finance Bill which contains these taxation proposals. Therefore, according to some analysts, the so-called parliamentary control over money and finance becomes irrelevant and the Executive's decision in regard to the rate of taxes prevails. But, this is not so. Actually, the immediate operation of the rate of taxes, especially excise and custom duties, is necessary to avoid speculation, hoarding and unintended financial benefit to a section of traders and manufacturers. On the other hand, Parliament's approval is mandatory as per article 265 of the Constitution. To meet both these requirements, it is provided that within 75 days of the introduction of the Finance Bill, it must receive the approval of Parliament and assent of the President. If any Government fails to obtain parliamentary approval of its taxation proposal within the stipulated period, then they will have to return to the individual tax payers the taxes so levied and collected. Therefore, it is not possible that the Executive can run away without the approval of Parliament.

Now-a-days, with the complexity in administration, parliamentary control over money and finance by the whole House is becoming more and more difficult. Firstly, there is a time constraint. In the early years of our parliamentary system, during the tenure of the First, Second and Third Lok Sabhas nearly two-thirds of the total time of parliamentary Sessions was devoted to transact financial and legislative business. Therefore, it was possible for the members to give more time to these matters and detailed scrutiny of Executive action was possible. Though the financial transactions over the years have increased enormously, now-a-days the time devoted to transact legislative and financial business has been reduced to just one-third of the total time of Parliament. It is interesting to note that to discuss a Budget proposal in 1947-48 involving an amount of Rs. 197 crore as revenue expenditure, Parliament devoted several weeks but in recent years, an expenditure proposal of Rs. 3,75,223 crore was approved without much discussion.

Does this trend indicate the lack of interest by people's representatives in public finance? It is not so. The parliamentary system has provided other instrumentalities to keep its vigil on the Executive in regard to money and finance. In fact, the strong Committee System that has evolved over the years, starting with the Public Accounts Committee (established in

1921), the Estimates Committee (established in 1950) to the Departmentally Related Parliamentary Standing Committees (established in 1993) is acting as a watchdog of Parliament on how the Executive is raising resources and spending it. A strong Committee System can effectively restrain the profligacy of the Executive in money matters. Moreover, the Office of the Comptroller and Auditor-General, a unique institution enjoying constitutional protection, helps Parliament to detect financial irregularities and compel the Executive to take corrective measures.

To sum up, during the last fifty years, the Indian Parliament has done its job well in ensuring that peoples' moneys are not wasted and are spent only on the services approved by their elected representatives.

PARLIAMENTARY PRIVILEGES

G.M. Banatwalla

Introduction

A democratic polity presupposes equality of all citizens in the eyes of the law. As a basic principle, therefore, members of Parliament are in no different position from that of an ordinary citizen in the matter of the application of laws. Parliamentary privileges and immunities from legal action are only exceptional in nature. They are, in fact, legal exceptions or exemptions to ensure that the highest elected forum of the country and its members may function freely and fearlessly, without any let or hindrance. The freedom, the authority and the dignity of the House—that comes into existence as a result of the collective votes of the nation and which House works for the nation as a whole—have necessarily to be upheld and safeguarded lest the entire parliamentary system itself should collapse. Thus, while the basic principle of equality of all citizens prevails and does not discharge a member of Parliament from his obligations under the laws of the land, parliamentary privileges apply only insofar as they are necessary to enable the members individually and the House collectively, to function freely. In the words of Erskine May, the powers and the privileges of Parliament and its members are a "necessary means to fulfilment of functions".

Each House of the Parliament enjoys certain powers and privileges for being able to function freely and effectively and for the protection of its members and the vindication of its own authority and dignity. The House cannot perform its functions without the unimpeded use of the services of its members. Hence members too have parliamentary privileges individually. Further, these rights and immunities, related to performance of parliamentary duties without any let or hindrance, are also necessary to safeguard the rights of the electorate. An electorate that returns a member to the Parliament rightly expects him to function freely and fearlessly. A true appreciation of the nature and limitation of parliamentary privileges unfolds its necessity and clearly repeals any misgivings as to the creation of any class of feudal lords or a class of 'hands-off' or 'touch-me-not' citizens.

Parliamentary privileges are akin to contempt power of the courts. This contempt power, too, flows from the constitutional exception to the citizen's Fundamental Right to freedom of speech and expression. This, however, is not to gag the right to free speech. Whether it is the question of the contempt of court power or of parliamentary privilege, there is no ban on fair criticism. As Justice Frankfurt puts it: "The need is great that courts be criticised but just as great that they be allowed to do their duty." None can paralyse the system and the need is great to act against gross, unfounded attacks calculated to destroy the process.

Dimensions of Parliamentary Privileges

The founding fathers of the Constitution provided that until the Parliament and the Legislatures of the States define by law, the privileges and immunities of each of the House shall be those of the House of Commons of the United Kingdom, and of its members and Committees, at the commencement of the Constitution, that is, on 26 January 1950. Indian parliamentary system thus inherits the entire wealth of customs, conventions, wisdom and experience of centuries of British history of evolution and functioning of the Westminster system.

Nevertheless, despite this all embracing sweep of the provision, the founding fathers of the Constitution were most particular in respect of the freedom of speech in the Parliament and stated explicitly: that subject to provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament and State Legislatures; that no member of Parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in Parliament or State Legislature or any Committee thereof; that no person shall be so liable in respect of the publication, by or under the authority of either House of Parliament or State Legislature, or any report, paper, votes or proceedings; and that immunity from any legal proceeding shall also apply to persons who by virtue of the Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of Parliament or State Legislature or any Committee thereof.

These privileges were implicit in the provision that the parliamentary privileges in India shall be those of the House of Commons at the commencement of the Indian Constitution; yet their explicit mention reflects the concern of the founding fathers of the Constitution for these basic privileges and an attempt to obviate the necessity of reference to British system to determine their dimensions.

Freedom of Speech and Votes

Freedom of speech in Parliament is of the widest dimension. It has been held that though a speech delivered by a member may amount to even contempt of court, no action may be taken against him. The Supreme Court ruled:

> The article confers immunity *inter alia* on respect of 'anything said...in Parliament', the word "anything "is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of business of Parliament. Once it is proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. Courts have no say in the matter and should really have none.

Article 105 (1) makes the freedom of speech in Parliament "subject to provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament." The stipulation "subject to the provisions of this Constitution" does not mean subject to all the provisions of the Indian Constitution. This limitation has been interpreted by the Supreme Court to mean that the words "regulating the procedure of Parliament" should be read as governing both the "provisions of the Constitution and the rules and standing orders". So freedom of speech in Parliament and State Legislatures becomes subject to only: (i) such provisions of the Constitution as regulate the procedure of the Parliament and Legislatures; and (ii) The Rules of Procedure and Conduct of Business in Parliament and State Legislatures. Article 121 for example lays down that "no discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an Address to the President praying for the removal of the judge as hereinafter provided." Rule 352 lays down a set of rules to be observed while speaking in the House. Rule 353 provides that no allegation shall be made against any person unless the member has given adequate advance notice to the Speaker and also to the Minister concerned so that the Minister may be able to make an investigation into the matter for the purpose of a reply. The Speaker is empowered to prohibit the member from making any such allegation as is derogatory to the dignity of the House or if no public interest is served by making such allegation.

Article 105 (2) grants immunity to a member from any legal proceeding in respect of anything said or any vote given by him in Parliament or any Committee thereof. In the JMM case, where certain MPs had allegedly received a bribe to vote against the no-confidence motion in the Cabinet of Shri P.V. Narasimha Rao in 1993, the 'givers' of the bribe were sentenced but the 'takers' of the bribe enjoyed, as per the Supreme Court ruling in 1998, constitutional immunity 'in respect of anything said or any vote given in the Parliament.'

A resolution adopted by the British House of Commons on 15 July 1947 had said: "It is inconsistent with the dignity of the House, with the duty of a member to his constituents and with the maintenance of the privilege of freedom of speech of any member of his House to enter into any contractual agreement with an outside body, controlling or limiting the member's independence of action in Parliament or stipulation that he shall act in any way as the representative of such outside body in regard to any matter to be transacted in Parliament; the duty of a member being to his constituents and to the country as a whole, rather than to any particular section thereof."

Way back in 1951, H.G. Mudgal of the Provisional Parliament of India was expelled by the House for espousing the cause of the Bombay Bullion Exchange for consideration. Mudgal tendered his resignation before expulsion could take effect. Nevertheless, there are obvious constraints and limitations in respect of both the form and the extent of the intervention by the House. Chief Justice Warren Burger of the Supreme Court of the United States echoed the need for judicial intervention when he declared that "taking a bribe...is not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator". Another strong statement comes from Lord Salmon who said in the House of Lords: "This is a charter for freedom of speech in the House; it is not a charter for corruption."

Right of Parliament to Regulate its Procedure

Article 118 lays down that the Parliament has the right to regulate its own procedure and conduct of business. And as a corollary, article 122 provides that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure. The Supreme Court has upheld the right of the Parliament to exclude strangers from the House, to ensure when necessary the secrecy of the debate and to prohibit the publication of the debates. In the *Searchlight case*, M.S.M. Sharma had published in his paper even the expunged portion of a member's speech. The Supreme Court has held that article 105 overrides the Fundamental Right of a citizen and the freedom of the Press under article 19 (1) (a).

Privileges Specified in the Rules:

The Rules of Procedure and Conduct of Business in Lok Sabha specifies:

(i) That the House must be informed immediately in case a member is detained, arrested, convicted, imprisoned and released. The information is to be communicated to the Speaker by the committing judge, Magistrate or executive authority, as the case may be (Rules 229, 230, 231).

(ii) That no arrest shall be made and no legal process shall be served within the precincts of the House without obtaining the permission of the Speaker (Rules 232, 233).

(iii) That a Parliamentary Committee shall have the power to send for persons, papers and records. It may summon witnesses and take evidence on oath (Rules 269-273).

The position in regard to Parliamentary Committees, as at (iii) above, raised the question of protection of witnesses as Parliamentary Committees are not bound by any legal code of procedure. The question roused considerable interest, particularly in Australia. The New South Wales Bar Council, in a statement issued on 15 October 1971, criticised the activities of the Committees, particularly the Committee on Securities and Exchange claiming, amongst other things, that the witnesses did not have the elementary protection granted to a citizen in court proceedings. It was, however, recognised that no valid complaint could be levelled at the way in which the Committees had carried out their inquiries. Nevertheless, Australia has Public Accounts Committee Act and the Public Works Committee Act which set out the powers of the Committees in relation to witnesses.

Privileges Specified in Statutes

Section 135-A of the Civil Procedure Code provides for freedom of members from arrests in civil cases during the continuance of the Session and forty days before its commencement and forty days after its conclusion. This immunity from arrest does not extend to criminal cases or to preventive arrests or detentions under statutory authority by Executive order. A member in prison is, however, entitled to receive parliamentary papers and to send letter to the Speaker or the Chairman of the Committee.

It is interesting to note that in addition to the period when the House is in Session, the freedom of arrests in civil cases extends to a period of forty days before the commencement of the Session and forty days after its conclusion. Thus, the freedom period comprises of eighty days during the inter-Session period and generally speaking, an inter-Session period or the period between two Sessions is less than eighty days. Under such a circumstance, a member once elected to the Parliament may never come to be arrested under civil process during the entire term of his membership. This forty days exemption is absent in most other States of the world. Article 50 of the Constitution of Japan, 1946, provides that while the House is in Session, a member apprehended before the opening of the Session shall be freed during the term of the Session upon the demand of the House.

Codification of Privileges

The Constitution empowers the Parliament and State Legislatures to define by law their powers, privileges and immunities. There is, however, no codification and the Parliament and State Legislatures have chosen to rely on the constitutional provisions that until so defined, their powers, privileges and immunities shall be such as may from time to time be defined by Parliament by law and until so defined shall be those of that House and of its members and Committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

Lord Seldon remarks in jest: "The Parliament men are as great princes as any in the world, no one must know the number of their privileges and whatever they dislike is breach of privilege." The fact, nevertheless, is that major parliamentary privileges are well defined and duly recognized. A body of codified law of privileges would only create a lot of complications. Codification, being a law made by the Parliament, would attract article 13 of the Constitution and would make the law of privileges subject to Fundamental Rights of the citizens and to judicial review, thus defeating the very purpose to be served by the privileges. As the former Chief Justice of India, M. Hidayatullah put it: "With a codified law, more advantage will flow to persons bent on villifying Parliament, its members and Committees and the courts will be called upon more and more to intervene...a written law will make it difficult for Parliament as well as courts to maintain that dignity which rightly belongs to Parliament and which the courts will always uphold as zealously as they uphold their own."

Penal Powers of Parliament

In order to protect its privileges and immunities, the Parliament has penal powers to commit a member or any other person for breach of privilege or contempt of the House. The concerned House may admonish the guilty or even send him to prison. In the case of its own members, who indulge in disorderly conduct during a sitting or who acts against the dignity of the House, two other punishments may be given, namely, the member may be suspended from the sitting of the House for a period or be expelled from the service of the House. In the first such American case, *Anderson v. Dunn*, in 1821, the Supreme Court upheld the penal power of the Congress in an eloquent passage:

> That a deliberative Assembly, clothed with the majesty of the people, and charged with the care of all that is dear to them, composed of the most distinguished citizens, selected and drawn together from every quarter of a great nation, whose deliberations are required by public opinion to be conducted under the eye of the public and whose decisions must be clothed with all that sanctity, which unlimited confidence in their wisdom and purity can inspire, that such an assembly should not possess the power to suppress rudeness, or repel insult, is a supposition too wild to be suggested.

The British House of Commons has, during its long and eventful history, exercised its power against individuals, Sheriffs, Magistrates and even judges. Brass Crossby, Lord Mayor of London and a Magistrate, was committed to the Tower of London for having admitted to bail a person who had been committed to prison under a warrant issued by the Speaker of the House. The Sheriffs of Middlesex were committed to custody for contempt on their attempting to execute the contradictory orders of the court. In 1686, two judges were imprisoned in the name of privileges. The U.P. Legislative Assembly in India tried to emulate the House of Commons when it ordered in 1964 that the two judges of the Lucknow Bench of the Allahabad High Court be brought in custody before the House for their having granted bail to one Keshav Singh who had been committed to prison by the House on contempt. The President of India then decided to step in and make a reference to the Supreme Court on the conflict between the two constitutional titans—the Legislature and the Judiciary.

It is an established British convention that courts may decide whether a particular privilege exists or not, but the House itself shall be the sole judge to decide whether a breach or contempt has been committed, and if so, to award the punishment. Some argue that the House in India sits both as prosecutor and judge in its own case and that unlike Great Britain, India has a written and federal Constitution and that judicial function or power is not the proper incident of the legislative function. They suggest that the exercise of the penal powers be transferred to the courts.

Kenya, by its National Assembly (Powers & Privileges) Act, 1952, has both codified the privileges and surrendered the penal power to courts. There are, however, others who argue that penal powers are absolutely necessary for the enforcement of the privileges and for the protection of the entire parliamentary system. The High Court in Australia observed in 1995 in *Browns and Fitzpatrick case* that "throughout the course of English history there has been a tendency to regard those powers as not strictly judicial but as belonging to the Legislature, rather as something essential or, at any rate, proper for its protection." The Privy Council held that the judgment of the Chief Justice of Austràlia was un-impeachable. *Melbourne Age* said in its editorial:

> If Parliament is to be the highest authority in the land, constrained only by the Constitution, how can it leave to another institution the task of deciding whether it has been held in contempt? There is a competing argument that parliamentary supremacy must be maintained if our political system is to function properly. What parliamentarians—with their duty to the institution and responsibility to the people— must do is to uphold the principle of parliamentary supremacy while safeguarding the rights of the people.

Chief Justice Denman observed in the case of Sheriffs of Middlesex: "Representative bodies must necessarily vindicate their authority by means of their own, and those means lie in the process of committal for contempt; the courts of Justice as well as the Houses, must be liable to continued obstruction and insult, if, they are not entrusted with such powers".

In his minority opinion in the Presidential reference in respect of *Keshav Singh's case*, Justice Sarkar of the Supreme Court said forcefully: "We must not lose faith in our people. We must not think that the Legislatures would misuse the powers given to them by the Constitution or that safety lay only in judicial correction. Such correction may produce friction and cause more harm than good".

To criticise the Parliament and Legislature as imbibed with passion for sweeping power emanating from the "exotic, even bizarre jurisprudence of parliamentary privileges, polluting the democratic system" is theoretic blight. It is flying in the face of the facts to argue that parliamentary privileges and the penal powers are a threat to personal liberties and that there is any indiscriminate, wanton training of the "parliamentary missiles against the Press, the Judiciary and the lay individuals." In 1981, for example, the Lok Sabha Speaker disallowed 116 notices of question of privileges and only 3 were referred to the Privileges Committee. In 1991, 58 notices were received, 53 were disallowed and only 1 went to the Committee. In 1992, all the 53 notices were disallowed. Normally, the House decides to best consult its own dignity and take no notice of every instance which constitutes a breach of privilege.

In its inheritance of the British institution of privileges, the Parliament generally observes the recommendation of the Select Committee on Parliamentary Privileges of the House of Commons (U.K.), 1967 namely that "the House should exercise its penal jurisdiction: (i) in any event as sparingly as possible, and (ii) only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its members or its officers from such improper obstruction or attempt at or threat of obstruction as is causing or is likely to cause, substantial interference with the performance of their respective functions."

During the entire period of half a century of the parliamentary system, there have been only two cases in the Lok Sabha of persons summoned to the Bar of the House and reprimanded by the Speaker. Indeed, in the case of expulsion of Smt. Indira Gandhi, there had been allegations of extraneous consideration. Later, in 1981, the Lok Sabha resolved to rescind its earlier resolution of action against Smt. Indira Gandhi. The resolution declared that the action was "in violation of the principle of natural justice" and that the proceedings of the Committee and the House regarding the said action "shall not constitute a precedent in the law of parliamentary privileges."

The British House of Commons has exercised wide powers in privilege cases. In 1641, Taylor, a member of the House, was both expelled as also adjudged to be incapable of being a member for ever. Another member Wallop, who was expelled in 1666, was forbidden to hold any public office in the country, not to speak of re-entry into the House. In 1712, Robert Walpole was expelled and declared "incapable of serving the present Parliament". One may shudder at such an unbridled and wide scope of the power of the Parliament.

The power of the Parliament and the State Legislatures in India to expel a member from the service of the House has come under attack. Political pundits argue that the power is an affront to the dignity of elections and the principle of representation. Even the electors have not been granted the power to recall their members. It is asked: "Can the power denied to the people by the Constitution, be made available to the representatives of the people?" Courts have differed on the issue. The Madhya Pradesh High Court upheld the power in 1967 but a decade later the Punjab and Haryana High Court denied it. The last word is yet to come as the Supreme Court has had no occasion to pronounce on the issue.

An Overview

The advisory opinion of the Apex Court in the Presidential reference in 1965 has only served to render the Indian inheritance of the British institution of parliamentary privileges and the penal jurisdiction of the Parliament rather inchoate. The sway of the majority opinion shakes the entire edifice of the parliamentary principles insofar as it holds that the power of the Parliament and the State Legislatures to commit anyone to prison (whether by a speaking or by a general warrant that states no grounds) is not exclusive and is subject to judicial review and that the parliamentary powers and privileges are subject to the Fundamental Rights of the citizens. One wonders whether the majority opinion was handed down under the extreme stress of events leading to *Keshav Singh's case.* There have been repeated protests from the Presiding Officers of Legislative Bodies. They have, while reiterating the supremacy of the Legislature under the Constitution and faith in the independence of the Judiciary and the freedom of the Press, unanimously resolved that "the Legislatures in India had, and were intended by the founders of the Constitution to have, exclusive jurisdiction to decide all matters relating to the privilege of the House, their members and Committees without any interference from the courts of law or any other authority."

The situation calls for "mutual trust and respect between Parliament and courts". Extreme latitude of the British system can be avoided and caution, restraint, wisdom and circumspection on the part of both the constitutional titans—the Legislature and the Judiciary—can reconcile the indispensable power of Parliament which is the highest elected forum of the people to protect itself, its members and officers from grossly unfounded attacks, with due concern for the liberty of the individual, but a weakening of the free functioning of the Parliament can only be at the peril of the entire democratic fibre of the society.

QUESTION TIME IN PARLIAMENT

Pawan Kumar Bansal

Come the Question Hour in Parliament and Shakespeare sounds so true: "Uneasy lies the head that wears a crown". That is the time when members strive to ask awkward supplementaries to the Questions called for oral answers—either to settle some old score with a Minister or to flaunt their own knowledge of the subject. It is a testing time for any Minister, especially if the Prime Minister happens to be present in the House. His performance—how he takes on the spins or the googlies—is then under watch and can be crucial if a reshuffle is on the cards!

Before taking his position on the parliamentary battle field, a Minister is briefed by experts and bureaucrats about the widest range of supplementaries that they anticipate may arise from a particular Question. Once on the scene, it is he who has to field the volley of questions shot at him from different directions, although there is a regular replenishment of his ammunition from the Officers' Gallery. These missives can, however, cause an occasional misfire if by the time he reads the slip received from a prompting official and declares boldly that "it does not arise from the main Question", a more relevant supplementary may have been asked by another member. What follows then, may lessen the tension that may have built up earlier. So also when a Minister hears himself utter "orgasm" for "organism" while answering a technical question on health. Politicians may be known for their morbid sense of humour but they do laugh at the discomfort of their peers.

Despite the field day that members may have, still they are often heard complaining about the replies to their Questions being evasive or about the cavalier manner in which a more experienced Minister may try to brush off a difficult question. "I seek your protection, Sir," is what you then hear a dissatisfied member pleading persistently with the Chair. The latter occasionally joins in to reinterpret the Question for the Minister to elicit a clear reply from him, or sometimes, to bail him out of a precarious situation!

Addressing of questions to the Ministers for seeking information by the members reinforces the answerability of the Executive to the Legislature, and through the Legislature, to the people. The Freedom of Information Bill, when enacted into a law, will give some right to the public to have access to official records, but so far it is only through Parliamentary Questions that information has been elicited from a protective Executive clinging to the Official Secrets Act.

Asking questions in Legislatures has been considered to be a vital component of parliamentary practice and procedure. The Charter Act of 1853 did not specifically provide for it, but the first Legislative Council set up under this Act did ask Questions about the actions of the Executive. However, the Indian Councils Act of 1861 explicitly limited the role of the Legislative Council to legislative matters and it was only through the Act of 1892 that the right was accorded to the members to ask Questions, though limiting it just to giving a reply thereto; no supplementaries. Supplementary Questions were permitted for the first time under the rules framed under the Indian Councils Act of 1909. The important stage in the evolution of present-day Question Hour came with the Montague-Chelmsford Reforms in 1919. The first hour of the meeting was then assigned to the answering of Questions by the members.

Today, elaborate rules govern the practice and procedure relating to Questions. The Question Hour is considered to be a very important parliamentary tool available to the members. It provides a veritable glimpse of democracy at work. Members cutting across party-lines resist any action that tends to curtail this right of theirs which sometimes includes furnishing of answers without listing the Questions formally in the Agenda!

Coming back to the parliamentary arena, a Minister who is so trained (by the bureaucracy) that he begins to see everything from a bureaucrat's point of view, (and has "gone native" in the British parlance) and knows that the best answer to a Question is that which discloses no information and leaves the members no wiser. He has already mastered the art of saying things with tact and finesse. If you want to know what action has been taken on certain complaints, you may be told in written reply that appropriate action has been taken (no supplementaries on that)! In oral answers, he may choose to be crisp, he may ask for fresh notice, and sometimes, if it is towards the end of the Question Hour, he may set out to read a lengthy statement in the midst of which the Chair may have to announce, that the "Question Hour is over". Then dawns the vibrance of the Zero Hour.

A member's exasperation is not confined to what goes on in the House alone. To his consternation, he sometimes learns that his Question has not even been admitted for one of the many grounds enumerated in the *Rules of Procedure*. The relevant rule, as such, is unexceptionable—no fault can be found with ruling out Questions that make defamatory statements or charge of a personal character, or ask for information on matters under adjudication by a court of law, or refer discourteously to a friendly foreign country. It is, however, the application of the rule which causes chagrin sometimes. Imagine a member's plight on being informed that his simple question seeking information about the cancellation of some train was disallowed on the ground that "it asks for information about matters which are in their nature secret"!

Editors are also overworked, polishing the questions submitted by members or consolidating some on the same subject. With their experience, they sometimes undertake to re-word a question to make it more precise or intelligible; but there are occasions when the original question acquires a new meaning in the process. A question relating to soil conservation and ravine reclamation, as once submitted for answer in the Rajya Sabha, asked about the loss to fertile agricultural lands in Punjab by the "choes" emanating from the Shivaliks. In the printed list of questions, an over-punctilious editor substituted the vernacular word "choes" by the word 'disturbances'—a synonym for chaos! The rest of the question was left untouched. In another question relating to noise pollution, the ringing of ears, that is "tinnitus" was substituted by "tetanus".

Translation also can, at times, lead to a comedy of errors. Once when a member sought to put a supplementary on floods, he was told by the Chairman that the main question pertained to drought. This caused a flutter. It was then realised that the Hindi version of the question referred to "floods". Faced with a barrage of combative trivia, the Chairman permitted the next member to put supplementaries on "floods", fire, drought—everything!

Out of the large number of Questions for which members give notice for a particular day, only twenty are listed through ballot; the rest are transferred to the "unstarred" category. And out of these, only the first few are actually taken up in the one hour fixed for the purpose. Excitement, however, pervades the House when the Chair calls out Question after Question but finds the concerned members absent (may be, sometimes to help a friendly Minister, also). In that situation, another Minister, not expecting a Question directed to him to be taken up in normal course, is caught unawares. The Minister of Parliamentary Affairs, with anxiety writ large on his face, then flounces between the Chamber and the Lobbies to bring in any other Minister, whose question may be lower down in the list but the concerned member happens to be present. His alertness may avoid an embarrassing situation and also save the list from collapsing.

Coming to the Ministers' back-room boys, one usual form of giving written replies is that if a question begins with the words "whether it is a fact that..." and the answer is in the negative, then invariably the second part thereof about the 'action taken or proposed' is answered in the words "Does not arise". For instance, if no charter of demands had been submitted, then the question of taking any action thereon would not arise.

When habit becomes the test of truth, we may land up with an amusing answer. An illustration:

Question (Unstarred)

"(a) Whether it is a fact that existing Co-operative Credit and Service Societies do not grant consumption loan to marginal farmers and landless rural labour;

(b) if so, what steps are envisaged for protecting these sections of the society from the burden of exorbitant interest paid in distress to private money-lenders; and

(c) whether there is any plan to provide them help in kind during the lean periods by creation of separate societies for the specific purpose?

Answer

(a) No, Sir.

(b) & (c) Do not arise".

That is the Question Hour—attracting greater presence of members, keeping the Government at work, causing passions to rise, and lending occasional humour to the proceedings of the House!

THE CHANGING PROFILE OF LOK SABHA—A SOCIO-ECONOMIC STUDY OF MEMBERS (1952-2002)

G.C. Malhotra

Inhabited by more than 100 crore people of various identities distributed over a continental geographic spread, India emerges as a diverse society. There are prominent topographical divisions presenting multiplicity of cultural and ethnic groups and variety of language groups and local dialects. Similarly, thousands of socio-cultural groups distinguishing themselves in terms of occupations, ritual practices, life-styles and food habits present a challenge of daunting diversity for the processes of democratization, modernization and liberalization. An enquiry into the socio-economic attributes of members of the Lok Sabha reveals a microcosmic picture of this wide-spread diversity.

The multicultural nature of Indian society denotes not merely the co-existence of varied ideas and claims, but more significantly it means confluence—the confluence of different socio-cultural groups. In such a confluence, sometimes, its streams may take opposite directions and, as such, dissent may arise. But, dissent also has a positive aspect insofar as it helps in attaining a composite culture. Members of Lok Sabha represent this spirit in an effective manner and, irrespective of their socio-economic and ideological differences, collectively work for the overall development of the nation.

Against this background, the present study attempts to discuss patterns of membership in successive Lok Sabhas and their socio-economic attributes. This study has been undertaken on the basis of bio-data supplied by members on the constitution of the thirteen Lok Sabhas.* To compare the socio-economic background of the members, important factors such as age, education, occupational background, previous legislative experience, etc. have been taken into consideration.

General Membership Profile

The Constitution vests sovereignty in the people of India, which is exercised through their elected representatives. Commencing with the First

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*The bio-data pertaining to the Thirteenth Lok Sabha is based on the position obtaining on 23.8.2000, contained in the *Who's Who* of the Thirteenth Lok Sabha.

General Elections to the Lok Sabha, conducted in 1952, the electoral history of India during the next half a century, spanning thirteen General Elections, bears eloquent testimony to one of the most glorious chapters of India's democratic experience.

The Lok Sabha is composed of representatives chosen by direct election on the basis of adult suffrage, as prescribed by the Constitution. The elected membership is distributed in such a way that the ratio between the number of seats allotted to each State and population of the State is, as far as practicable, the same for all States. There are special provisions for reservation of seats for the Scheduled Castes and Scheduled Tribes and for nomination in respect of the Anglo-Indian community, which shows our commitment to providing equitable representation to all sections of society. A broad survey of all the thirteen Lok Sabhas reveals that the pattern of membership has, by and large, been reflective of the general distribution of various socio-economic categories in the society facilitating the emergence of the Lok Sabha as a microcosm of Indian society.

The party system and the electoral process in India have evolved over the last five decades. The one-party dominance of the first two decades slowly gave way to fragmentation of mainstream parties, proliferation of regional parties, representation of multiple ideologies and emergence of coalition governance in the next three decades. This apart, splits, mergers and alliances have frequently transformed the compositions of political parties. What we see today is thus the transformation of the political scene from the One-Dominant Party Period (1952-1977) to a period of Multi-Party Governance (1977-2002).

Our democratic experience of over fifty years shows that political parties and elections have become preferred modes of political and socio-economic transformation in India. These political devices have not merely fulfilled the institutional requirements of democracy, but also allowed the system to adapt itself in tune with the social ethos of the people. It is obvious that the legislators have very aptly become the symbols of the basic socio-economic fabric of the Indian population.

I. Age Profile

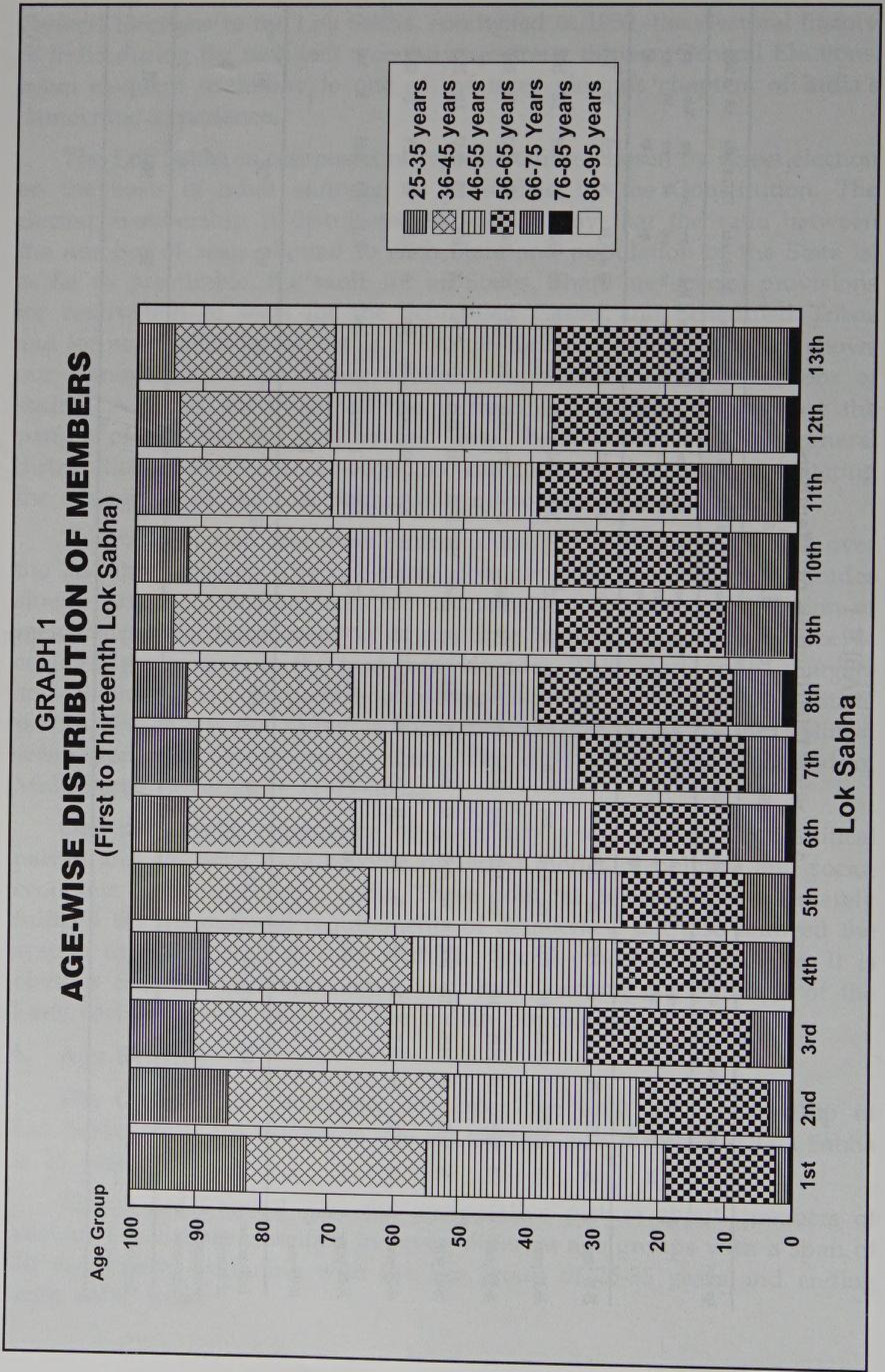
The Constitution prescribes no upper age limit for membership of Lok Sabha while the minimum age for election as a member of Lok Sabha is 25 years.

Table 1 and Graph 1 give the comparative picture about members of various Lok Sabhas classified in seven different age groups with a span of 10 years each, beginning with the age group of 25-35 years and ending with 86-95 years.

TABLE I

Age-wise Distribution of Members First to Thirteenth Lok Sabha

Age Group	1st Lok Sabha		2nd Lok Sabha		3rd Lok Sabha		4th Lok Sabha		5th Lok Sabha		6th Lok Sabha		7th Lok Sabha		8th Lok Sabha		9th Lok Sabha		10th Lok Sabha		11th Lok Sabha		12th Lok Sabha		13th Lok Sabha	
	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage
25-35 years	82	17.75	73	15.02	45	9.47	59	11.89	44	8.73	44	8.48	52	10.02	43	8.10	31	5.93	40	7.92	33	6.39	34	6.35	29	5.36
36-45 years	126	27.27	162	33.33	143	30.11	152	30.65	138	27.38	131	25.24	146	28.13	133	25.05	131	25.09	125	24.75	120	23.25	123	22.99	133	24.58
46-55 years	167	36.15	140	28.81	142	29.90	154	31.05	193	38.29	188	36.22	154	29.68	151	28.43	174	33.33	158	31.29	162	31.40	181	33.83	180	33.27
56-65 years	76	16.45	95	19.55	116	24.42	94	18.95	92	18.25	107	20.62	128	24.66	154	29.00	131	25.10	131	25.94	124	24.03	125	23.37	126	23.29
66-75 years	11	2.38	16	3.29	27	5.68	35	7.06	34	6.75	44	8.48	35	6.74	41	7.72	53	10.15	46	9.11	66	12.80	63	11.78	65	12.02
76-85 years	—	—	—	—	2	0.42	2	0.40	3	0.60	5	0.96	4	0.77	9	1.70	1	0.20	5	0.99	11	2.13	9	1.68	8	1.48
86-95 years	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	0.20	—	—	—	—	—	—	—	—
Total number of members who supplied information	462		486		475		496		504		519		519		531		522		505		516		535		541	
Total number of Seats	499		500		503		523		521		544		544		544		529		509		543		545		543	



GRAPH 1
AGE-WISE DISTRIBUTION OF MEMBERS
(First to Thirteenth Lok Sabha)

The average age of members in the First Lok Sabha was 46.5 years. After recording an upward trend upto the Third Lok Sabha in which the average age was 49.4 years, it came down in the Fourth Lok Sabha to 48.7 per cent. Trends show that in the Sixth, Eighth, Ninth, Tenth, Eleventh and Thirteenth Lok Sabhas, the average age was above 50 years. The First, Second, Third, Fourth, Fifth, Seventh and Twelfth Lok Sabhas had the average age below 50 years. The Twelfth Lok Sabha has emerged as the youngest House so far with 46.4 years, while the highest average age was recorded in the Thirteenth Lok Sabha with 55.5 years. *Table* 2 and *Graph* 2 provide percentage-wise details of all the thirteen Lok Sabhas.

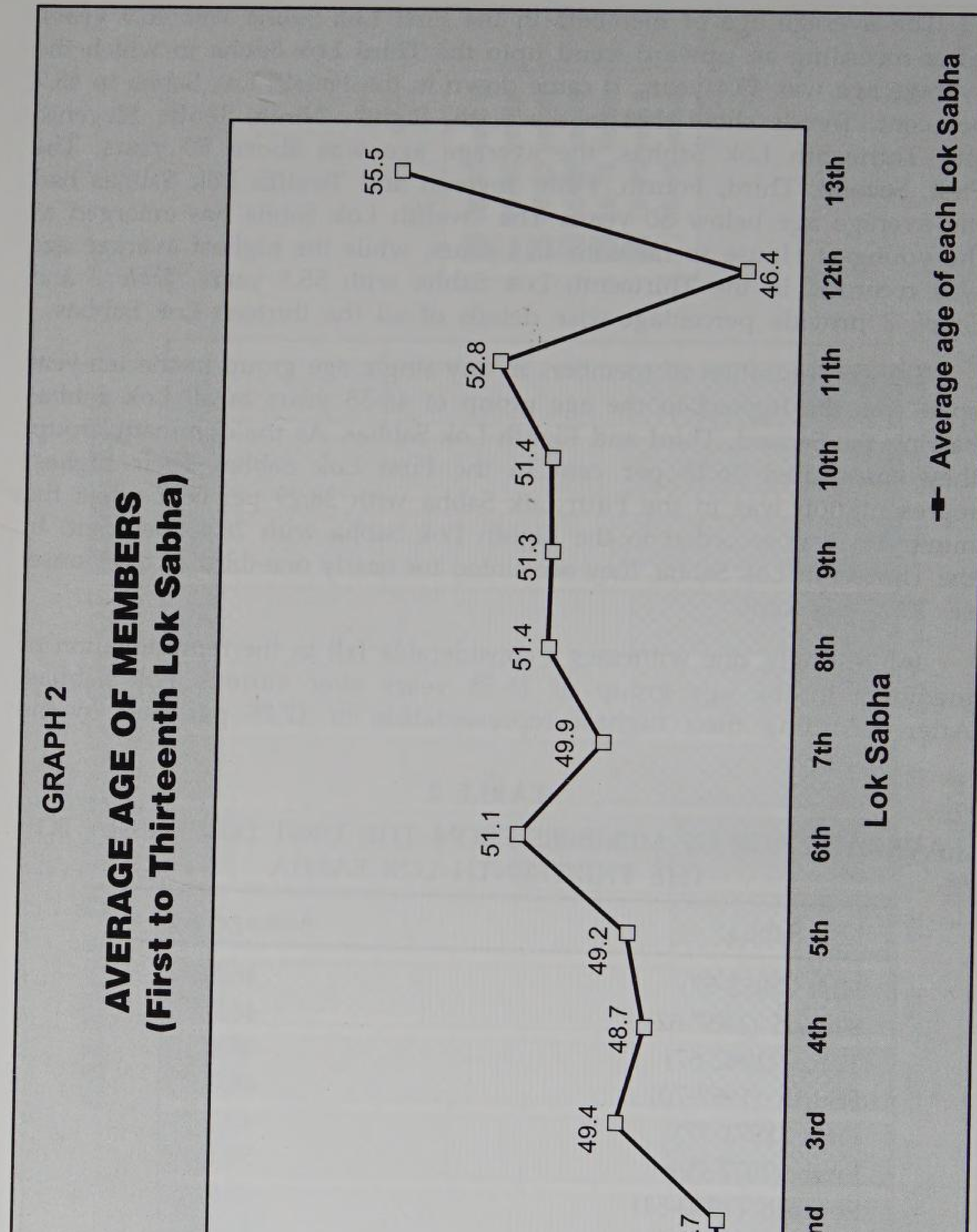
The concentration of members in any single age group in the ten-year span was the highest in the age group of 46-55 years in all Lok Sabhas barring the Second, Third and Eighth Lok Sabhas. As the dominant group, they constituted 36.15 per cent in the First Lok Sabha. Their highest representation was in the Fifth Lok Sabha with 38.29 per cent while the minimum was recorded in the Eighth Lok Sabha with 28.43 per cent. In the Thirteenth Lok Sabha, they accounted for nearly one-third of the House, *i.e.* 33.27 per cent.

Interestingly, one witnesses a considerable fall in the representation of members in the age group of 25-35 years over various Lok Sabhas. After recording their highest representation of 17.75 per cent in the

TABLE 2

AVERAGE AGE OF MEMBERS FROM THE FIRST LOK SABHA TO THE THIRTEENTH LOK SABHA

Lok Sabha	Average Age
First (1952-57)	46.5
Second (1957-62)	46.7
Third (1962-67)	49.4
Fourth (1967-70)	48.7
Fifth (1971-77)	49.2
Sixth (1977-79)	52.1
Seventh (1980-84)	49.9
Eighth (1984-89)	51.4
Ninth (1989-91)	51.3
Tenth (1991-96)	51.4
Eleventh (1996-97)	52.8
Twelfth (1998-99)	46.4
Thirteenth (1999-)	55.5



GRAPH 2

AVERAGE AGE OF MEMBERS
(First to Thirteenth Lok Sabha)

First Lok Sabha, their representation has suffered a steep fall. In the Thirteenth Lok Sabha, this group registered a marginal presence with 5.36 per cent, which has been the lowest so far. The category of members in the age group of 36-45 years has shown significantly consistent presence. Their highest representation was in the Second Lok Sabha with 33.33 per cent while the lowest concentration was seen in the Twelfth Lok Sabha with 22.99 per cent.

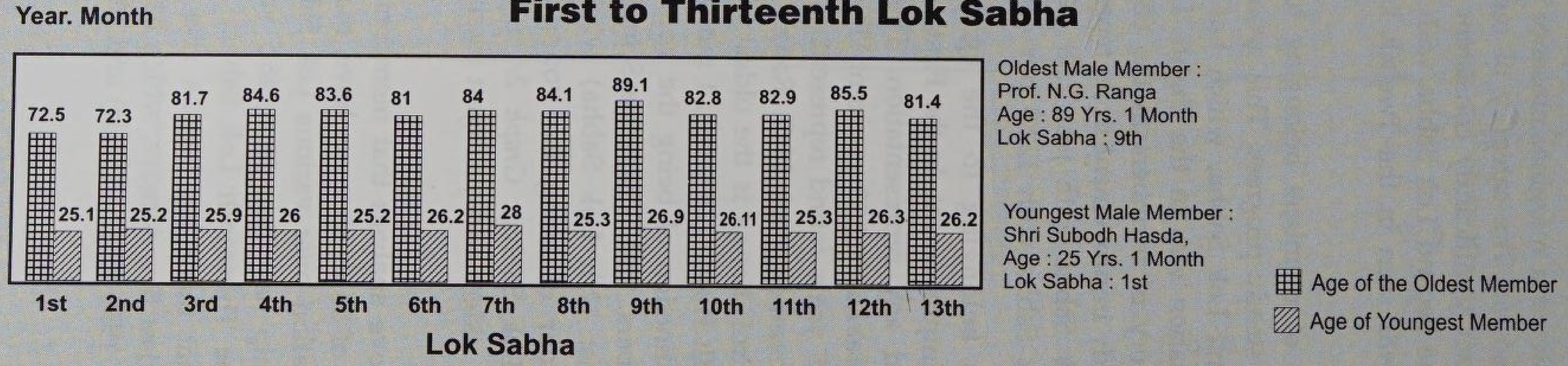
On the other hand, the category of members belonging to the age group of 56-65 years has registered a steady progress. This group formed 16.45 per cent of the total in the First Lok Sabha, which has been the lowest so far. Their highest representation was in the Eighth Lok Sabha with 29 per cent. Similarly, the category of members in the 66-75 years' age-group has also made slow but steady improvement in its representation. It was at its lowest in the First Lok Sabha with just 2.38 per cent. It touched its peak in the Eleventh Lok Sabha with 12.80 per cent.

The concentration of members belonging to the age group of 76-85 years also has shown a gradual improvement. In the First and Second Lok Sabhas, this group did not find any representation. Their highest percentage was in the Eleventh Lok Sabha at 2.13 per cent. The category of members in the age group of 86-95 years found representation only in the Ninth Lok Sabha wherein one member, Prof. N.G. Ranga (89 years, 1 month), found place. Incidentally, Prof. Ranga is the oldest member till date in all the Lok Sabhas. Shri Subodh Hasda (25 years, 1 month), elected to the First Lok Sabha holds the distinction of being the youngest male member so far. Among women members, Smt. Vijayaraje Scindia was the oldest member (79 years, 7 months: 12th Lok Sabha) while Kumari Vedakumari Mothey holds the honour of being the youngest woman member (25 years 6 months: 2nd Lok Sabha). *Graph 2A* provides the comparative picture in respect of the oldest and youngest members in all the thirteen Lok Sabhas.

It may thus be seen from the above analysis that members belonging to the older age groups in the range of 56 to 85 years have, barring some exceptions, improved their representation over various Lok Sabhas. As a result, the average age of membership has risen from 46.5 years in the First Lok Sabha to 55.5 years in the Thirteenth Lok Sabha. This could perhaps be attributed to the fact that there has been a rise in the life expectancy in the country during the last five decades, which has increased from 37.1 (male) and 36.2 (female) in 1951 to 62.3 (male) and 65.3 (female) in 1999.

GRAPH 2A

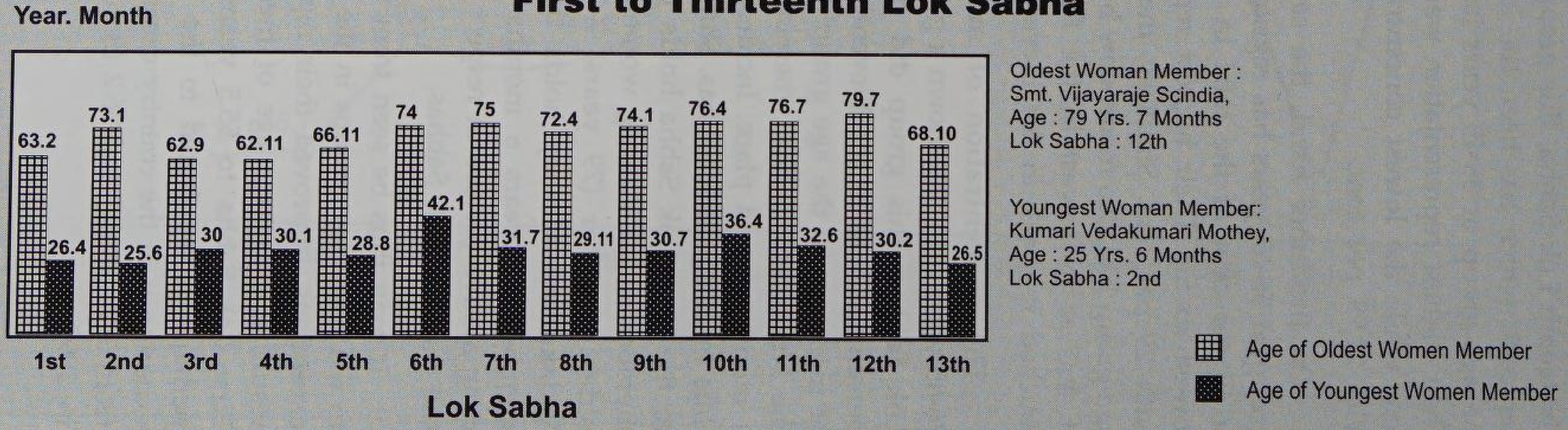
AGE OF OLDEST AND YOUNGEST MALE MEMBERS
First to Thirteenth Lok Sabha



Oldest Male Member :
Prof. N.G. Ranga
Age : 89 Yrs. 1 Month
Lok Sabha : 9th

Youngest Male Member :
Shri Subodh Hasda,
Age : 25 Yrs. 1 Month
Lok Sabha : 1st

AGE OF OLDEST AND YOUNGEST WOMEN MEMBERS
First to Thirteenth Lok Sabha



Oldest Woman Member :
Smt. Vijayaraje Scindia,
Age : 79 Yrs. 7 Months
Lok Sabha : 12th

Youngest Woman Member:
Kumari Vedakumari Mothey,
Age : 25 Yrs. 6 Months
Lok Sabha : 2nd

II. Educational Background of Members

For the purpose of making a comparative analysis of their educational background, members of the thirteen Lok Sabhas have been classified into five categories, *viz.*, (i) Under-Matriculates; (ii) Matriculates, Higher Secondary or Intermediate Certificate Holders; (iii) Graduates (including those with equivalent technical qualifications); (iv) Post-Graduates (including equivalent technical qualifications holders); and (v) Doctoral Degree or other high academic qualification holders. *Table* 3 and *Graph 3* indicate the number and percentage of members falling into these five categories.

If we look at the members belonging to the Under-Matriculate category, their number over various Lok Sabhas has been on the decline. They registered a representation of 2.81 per cent in the Thirteenth Lok Sabha as against 23.48 per cent in the First Lok Sabha, 25.48 per cent in the Second Lok Sabha and the highest 28.77 per cent in the Third Lok Sabha. Their minimum representation was recorded in the Ninth Lok Sabha with 2.09 per cent.

Members belonging to the category of Matriculates/Higher Secondary or Intermediate Certificate Holders had 18.44 per cent representation in the First Lok Sabha which started showing a declining trend from the Seventh Lok Sabha onwards. Their representation was 19.73 per cent in the Eleventh Lok Sabha, 20.23 per cent in the Twelfth Lok Sabha and 16.90 per cent in the Thirteenth Lok Sabha. The decline in the concentration of this category tends to consolidate the position of the category of Graduates and above in successive Lok Sabhas.

Going by any single category, Graduates accounted for their highest representation with 48.75 per cent in the Ninth Lok Sabha. In the First Lok Sabha, it was 37.1 per cent, which rose to 48.03 per cent in the Thirteenth Lok Sabha. Category-wise, the number of Post-Graduates has registered a steady progress and in the Eleventh Lok Sabha with 28.82 per cent, it surpassed the position obtaining in all the previous Lok Sabhas. Their representation in the First Lok Sabha was 17.82 per cent whereas it is 27.2 per cent in the Thirteenth Lok Sabha. The category of members having Doctoral Degree or above improved its position from 3.16 per cent in the First Lok Sabha to 5.06 per cent in the Thirteenth Lok Sabha. Combined together, Post-Graduates and Doctorate Degree holders constituted 20.96 per cent in the First Lok Sabha. This combined category registered 34.42 per cent, 32.7 per cent and 32.27 per cent representation in the Eleventh, Twelfth, and Thirteenth Lok Sabha, respectively.

TABLE 3

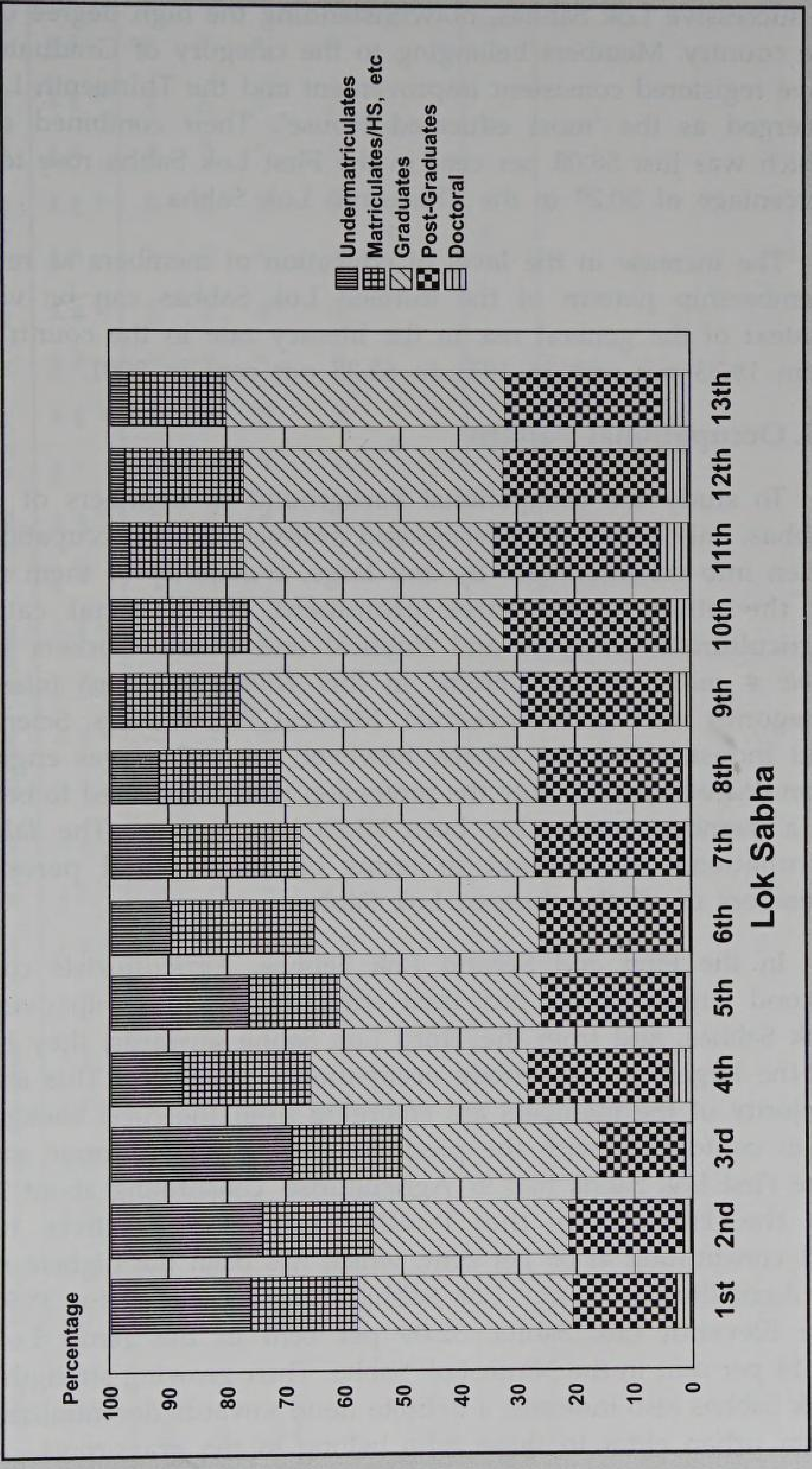
EDUCATIONAL BACKGROUND OF MEMBERS FROM THE FIRST TO THE THIRTEENTH LOK SABHA

Educational Background	1st Lok Sabha		2nd Lok Sabha		3rd Lok Sabha		4th Lok Sabha		5th Lok Sabha		6th Lok Sabha		7th Lok Sabha		8th Lok Sabha		9th Lok Sabha		10th Lok Sabha		11th Lok Sabha		12th Lok Sabha		13th Lok Sabha	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	percentage	Number	percentage
Under-Matriculates	112	23.48	120	25.48	141	28.77	54	11.81	119	23.15	52	9.8	53	10.03	42	7.9	10	2.09	18	3.57	15	2.9	12	2.26	15	2.81
Matriculates/ Higher Secondary or Intermediate Certificate holders	88	18.44	90	19.1	87	17.75	101	22.11	82	15.95	132	24.9	118	22.35	112	21	94	19.66	101	20.04	102	19.73	107	20.23	90	16.9
Graduates (including those with equivalent technical qualifications)	177	37.1	160	33.97	157	32.04	172	37.63	178	34.63	205	38.7	213	40.34	238	44.65	233	48.75	220	43.65	222	42.94	237	44.8	256	48.03
Post-Graduates (including technical qualifications)	85	17.82	92	19.53	98	20	113	24.73	127	24.7	132	24.9	136	25.76	131	24.58	124	25.94	145	28.77	149	28.82	149	28.17	145	27.2
Doctoral Degree or other higher academic qualification holders	15	3.16	9	1.92	7	1.44	17	3.72	8	1.57	9	1.7	8	1.52	10	1.87	17	3.56	20	3.97	29	5.61	24	4.54	27	5.06
Total number of members who supplied information	477		471		490		457		514		530		528		533		478		504		517		529		533	
Total number of seats	499		500		503		523		521		544		544		544		529		509		543		545		543	

GRAPH 3

EDUCATIONAL BACKGROUND OF MEMBERS

First to Thirteenth Lok Sabha



One of the striking features of membership pattern has been the upward movement of the graph relating to educational profile of members in successive Lok Sabhas, notwithstanding the high degree of illiteracy in the country. Members belonging to the category of Graduates and above have registered consistent improvement and the Thirteenth Lok Sabha has emerged as the 'most educated House'. Their combined representation which was just 58.08 per cent in the First Lok Sabha rose to a very high percentage of 80.29 in the Thirteenth Lok Sabha.

The increase in the level of education of members as reflected in the membership pattern of the thirteen Lok Sabhas can be viewed in the context of the general rise in the literacy rate in the country as a whole from 18.33 per cent in 1951 to 65.38 per cent in 2001.

III. Occupational Pattern

To study the occupational background of members of different Lok Sabhas, only certain well recognised professions and occupations have been taken into consideration. By and large, a majority of them represent one or the other of the three prominent occupational categories, *viz.* Agriculturists, Lawyers and Political and Social Workers mentioned in *Table 4 and Graph 4.* 'Others' in this *Table* and *Graph inter alia* include categories such as Businessmen, Medical Practitioners, Scientists, Traders and Industrialists, etc. Where, however, a member was engaged in more than one occupation, only the profession which appeared to be predominant in a member's career has been taken into account. The *Table* shows the occupational background in terms of number and percentage of the members of all the thirteen Lok Sabhas.

In the First and Second Lok Sabhas, Agriculturists constituted the second largest group. But, their strength has gone up over the various Lok Sabhas, and from the Third Lok Sabha onwards, they have emerged as the largest group among occupational categories. This shows that the majority of the members are emerging from the rural background, which is in conformity with the predominantly rural economic scene in India. The First Lok Sabha had 97 Agriculturists constituting about 22.45 per cent of the House. In the Twelfth Lok Sabha, their number was 261 constituting 49.06 per cent, which has been the highest representation of Agriculturists in any Lok Sabha. They accounted for 38.98 per cent in the Eleventh Lok Sabha, 32.09 per cent in the Tenth Lok Sabha and 44.14 per cent in the Ninth Lok Sabha. Their growing strength in successive Lok Sabhas also indicates a definite trend towards decentralization of power from urban elites to those who belong to the grass-roots.

TABLE 4

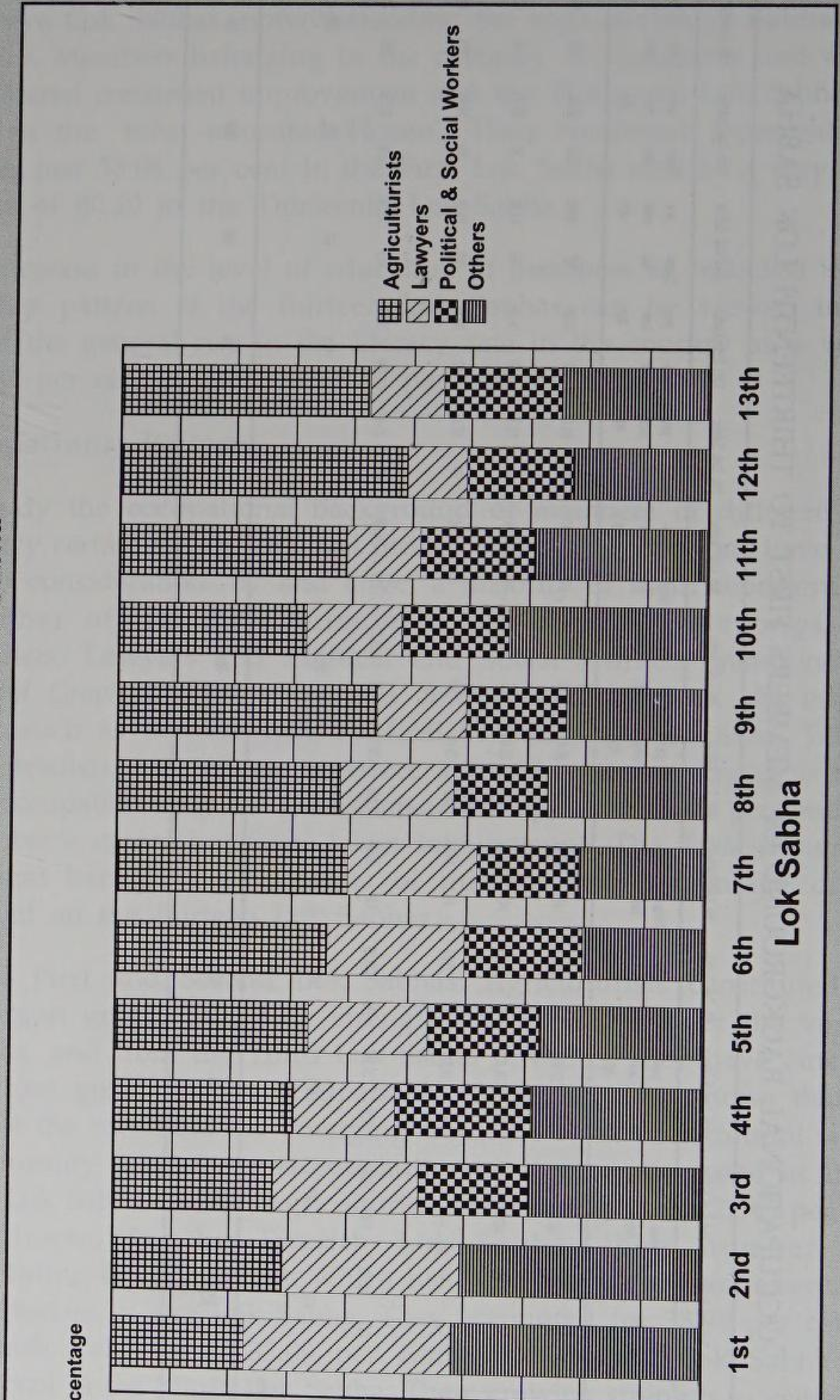
OCCUPATIONAL BACKGROUND OF MEMBERS FIRST TO THIRTEENTH LOK SABHA

Prior Occupation	1st Lok Sabha		2nd Lok Sabha		3rd Lok Sabha		4th Lok Sabha		5th Lok Sabha		6th Lok Sabha		7th Lok Sabha		8th Lok Sabha		9th Lok Sabha		10th Lok Sabha		11th Lok Sabha		12th Lok Sabha		13th Lok Sabha	
	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage	Number	percentage
Agriculturists	97	22.45	141	29.01	129	27.45	154	30.62	168	33.20	189	36.00	206	39.39	203	38.30	230	44.14	163	32.09	207	38.98	261	49.06	230	42.67
Lawyers	153	35.42	147	30.25	115	24.47	88	17.49	103	20.36	123	23.43	116	22.18	101	19.06	80	15.36	83	16.34	65	12.24	54	10.15	66	12.24
Political & Social Workers	—	—	—	—	88	18.72	115	22.86	96	18.97	105	20.00	90	17.21	85	16.04	89	17.08	92	18.11	104	19.59	96	18.05	108	20.04
Others	182	42.13	198	40.74	138	29.36	146	29.03	139	27.47	108	20.57	111	21.22	141	26.60	122	23.42	170	33.46	155	29.19	121	22.74	135	25.05
Total number of members who supplied information	432		486		470		503		506		525		523		530		521		508		531		532		539	
Total number of seats	499		500		503		523		521		544		544		544		529		509		543		545		543	

GRAPH 4

OCCUPATIONAL BACKGROUND OF MEMBERS

First to Thirteenth Lok Sabha



The data reveals a clear change in the representation of Lawyers over different electoral periods. Their representation, which was 35.42 per cent in the First Lok Sabha, in fact, suffered a steep decline with the Twelfth Lok Sabha registering the lowest Lawyers' representation with 10.15 per cent. Thus, a group which outnumbered all other categories in the First and the Second Lok Sabhas, was pushed to the second place in the Third, Fifth, Sixth, Seventh and Eighth Lok Sabhas. In the Fourth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth Lok Sabhas, they occupied the third position.

The category of Political and Social Workers has been included in the study from the Third Lok Sabha onwards. Their representation touched the highest point in the Fourth Lok Sabha with 22.86 per cent. Overall trends indicate that this category has made steady progress during all the Lok Sabhas. After recording their lowest concentration in the Eighth Lok Sabha with 16.04 per cent, they registered 19.59 per cent, 18.05 per cent and 20.04 per cent representation in the Eleventh, Twelfth and Thirteenth Lok Sabhas, respectively. The emergence of Political and Social Workers as a prominent occupational category assumes significance in the context of the working of the Indian political system and is reflective of the fact that for many members politics or parliamentary work has become a full time engagement.

Over the years, other classes are also now throwing themselves into the political arena. *Table 4A* provides a detailed statement about representation of 24 categories, including Agriculturists, Lawyers, and Political and Social Workers over the thirteen Lok Sabhas. The occupational categories of Diplomats, Economists and Pilots were included from the Ninth Lok Sabha onwards. The categories of Businessmen, Scientists and Sportspersons were included for the first time in the study of the Tenth Lok Sabha while the categories of Cooperative Leaders and Management Consultants were included from the Eleventh Lok Sabha. Three new categories, *viz.* Chartered Accountants, Judges, and Veterinarians were included for the first time in the study of the Twelfth Lok Sabha. Majority of these categories, *viz.* Teachers & Educationists, Traders & Industrialists, Journalists & Writers etc., have witnessed decline in their representation.

TABLE 4A

OCCUPATIONAL BACKGROUND OF MEMBERS FROM FIRST TO THE THIRTEENTH LOK SABHA

Prior Occupation	1st Lok Sabha		2nd Lok Sabha		3rd Lok Sabha		4th Lok Sabha		5th Lok Sabha		6th Lok Sabha	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
1	2	3	4	5	6	7	8	9	10	11	12	13
Agriculturists/ Horticulturists	97	22.45	141	29.01	129	27.45	154	30.62	168	33.2	189	36
Artists	–	–	–	–	–	–	1	0.2	–	–	–	–
Businessmen	–	–	–	–	–	–	–	–	–	–	–	–
Chartered Accts.	–	–	–	–	–	–	–	–	–	–	–	–
Civil, Police & Military Service	16	3.7	19	3.91	4	0.85	16	3.18	17	3.36	9	1.71
Co-operative Leaders	–	–	–	–	–	–	–	–	–	–	–	–
Diplomats	–	–	–	–	–	–	–	–	–	–	–	–
Economists	–	–	–	–	–	–	–	–	–	–	–	–
Engineers and Technologists	–	–	–	–	4	0.85	7	1.39	6	1.18	5	0.95
Former Rulers	5	1.16	7	1.44	10	2.13	7	1.39	2	0.4	3	0.57
Judges	–	–	–	–	–	–	–	–	–	–	–	–
Industrial Workers/Trade Unionists	–	–	–	–	1	0.21	1	0.2	–	–	9	1.71

1	2	3	4	5	6	7	8	9	10	11	12	13
Journalists/ Writers	45	10.42	50	10.29	27	5.74	24	4.77	32	6.32	11	2.1
Lawyers	153	35.42	147	30.25	115	24.47	88	17.49	103	20.36	123	23.43
Management Consultants	—	—	—	—	—	—	—	—	—	—	—	—
Medical Practitioners	21	4.86	17	3.5	14	2.99	14	2.78	9	1.78	10	1.91
Pilots	—	—	—	—	—	—	—	—	—	—	—	—
Political and Social Workers	—	—	—	—	88	18.72	115	22.86	96	18.97	105	20
Religious Missionaries	—	—	—	—	1	0.21	4	0.8	2	0.4	—	—
Scientists	—	—	—	—	—	—	—	—	—	—	—	—
Sportspersons	—	—	—	—	—	—	—	—	—	—	—	—
Teachers and Educationists	43	9.95	55	11.31	27	5.74	33	6.56	36	7.11	44	8.38
Traders and Industrialists	52	12.04	50	10.29	50	10.64	39	7.76	35	6.92	17	3.24
Veterinarians	—	—	—	—	—	—	—	—	—	—	—	—
Total number of members who supplied information	432		486		470		503		506		525	
Total number of seats	499		500		503		523		521		544	

Prior Occupation	7th Lok Sabha		8th Lok Sabha		9th Lok Sabha		10th Lok Sabha		11th Lok Sabha		12th Lok Sabha		13th Lok Sabha	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
1	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Agriculturists/ Horticulturists	206	39.39	203	38.3	230	44.14	163	32.09	207	38.98	261	49.06	230	42.67
Artists	1	0.19	5	0.94	4	0.77	5	0.92	7	1.32	6	1.13	8	1.48
Businessmen	—	—	—	—	—	—	23	4.53	29	5.46	8	1.5	22	4.08
Chartered Accts.	—	—	—	—	—	—	—	—	—	—	1	0.19	2	0.37
Civil, Police & Military Service	5	0.96	16	3.02	6	1.15	16	3.15	13	2.45	10	1.88	8	1.48
Co-operative Leaders	—	—	—	—	—	—	—	—	4	0.75	—	—	—	—
Diplomats	—	—	—	—	3	0.58	4	0.79	4	0.75	2	0.38	—	—
Economists	—	—	—	—	1	0.19	—	—	1	0.19	1	0.19	—	—
Engineers and Technologists	6	1.15	4	0.75	11	2.11	7	1.38	9	1.69	5	0.94	8	1.48
Former Rulers	1	0.19	3	0.57	2	0.38	3	0.59	—	—	2	0.38	1	0.19
Judges	—	—	—	—	—	—	—	—	—	—	1	0.19	1	0.19
Industrial Workers/Trade Unionists	4	0.76	7	1.32	2	0.38	4	0.79	4	0.75	11	2.07	9	1.67
Journalists/ Writers	15	2.87	7	1.32	14	2.69	11	2.16	8	1.51	7	1.31	9	1.67
Lawyers	116	22.18	101	19.06	80	15.36	83	16.34	65	12.24	54	10.15	66	12.24
Management Consultants	—	—	—	—	—	—	—	—	2	0.38	2	0.38	2	0.37

1	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Medical Practitioners	10.	1.91	21	3.96	18	3.46	25	4.92	16	3.01	17	3.19	17	3.16
Pilots	—	—	—	—	1	0.19	1	0.2	2	0.38	—	—	1	0.19
Political and Social Workers	90	17.21	85	16.04	89	17.08	92	18.11	104	19.59	96	18.05	108	20.04
Religious Missionaries	1	0.19	1	0.19	—	—	3	0.59	1	0.19	4	0.75	2	0.37
Scientists	—	—	—	—	—	—	1	0.2	—	—	—	—	1	0.19
Sportspersons	—	—	—		—	—	2	0.39	—	—	3	0.56	2	0.37
Teachers and Educationists	35	6.69	41	7.74	41	7.87	49	9.64	41	7.72	28	5.26	33	6.12
Traders and Industrialists	33	6.31	36	6.79	19	3.65	16	3.15	14	2.64	12	2.25	9	1.67
Veterinarians	—	—	—	—	—	—	—	-	-	—	1	0.19	—	—
Total number of members who supplied information	523		530		521		508		531		532		539	
Total number of seats	544		544		529		509		543		545		543	

IV. Women Members

Traditional norms and conventionally assigned roles for men and women in the society tended to restrict in the past, women's participation in the political process. The situation changed during the freedom struggle when a large number of women also took part in the struggle for Independence. With the attainment of Independence, various steps were taken for achieving parity between men and women and for the empowerment of women such as the adoption of the principle of equality in the basic law, increased participation of women in economic life, and reinforcement of basic social indicators like education and health, etc. The growing number of women members, as depicted in *Table 5* and *Graphs 5* and *5A*, is indicative of our commitment in this direction.

As compared to 22 women members (4.4%) in the First Lok Sabha, their number has more than doubled and reached an all time high in the Thirteenth Lok Sabha with 49 members (9.02%). This percentage, however, looks dismal in comparison with the world average of 14.5 per cent.

TABLE 5

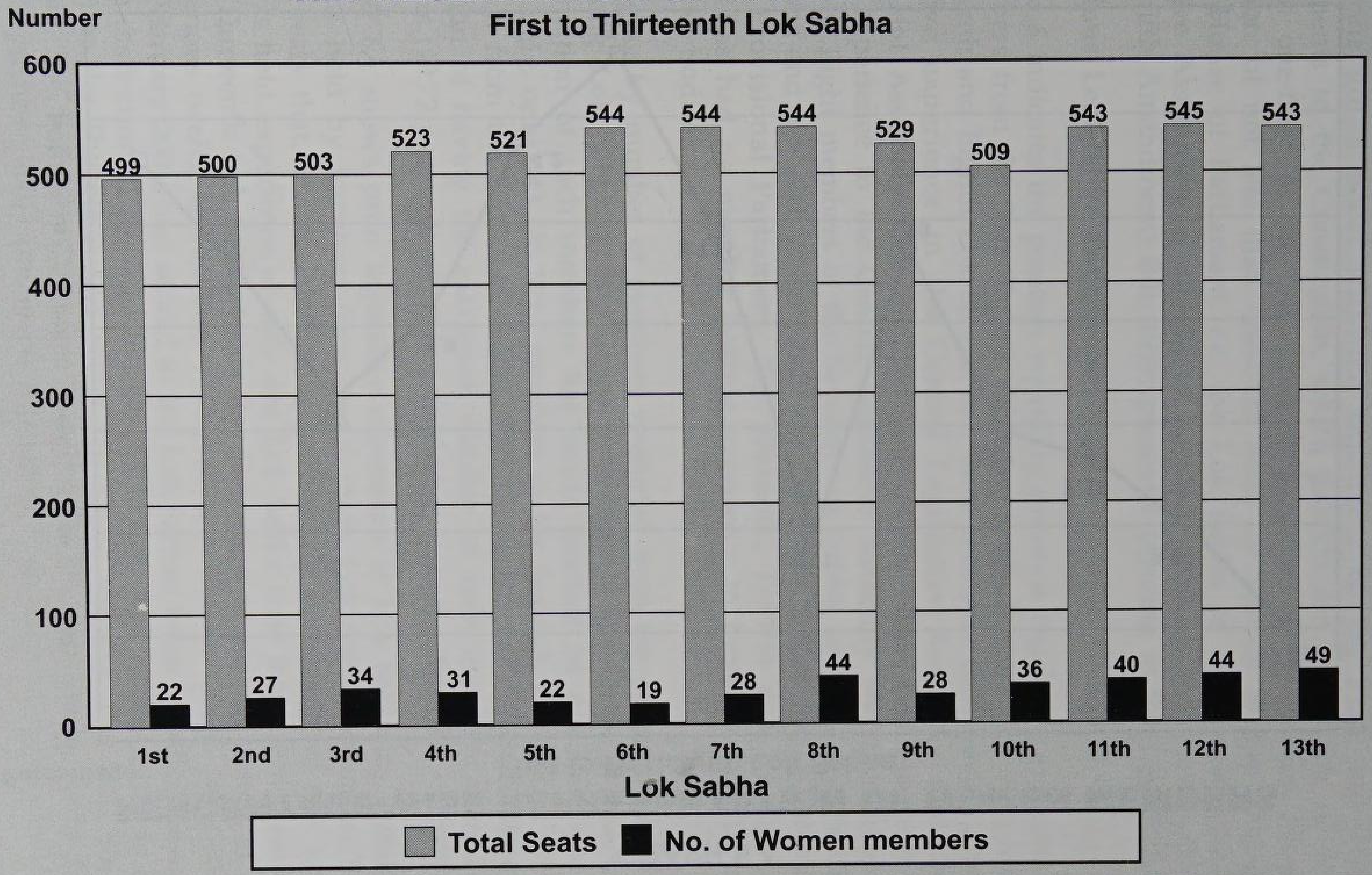
REPRESENTATION OF WOMEN MEMBERS FROM THE FIRST TO THE THIRTEENTH LOK SABHA

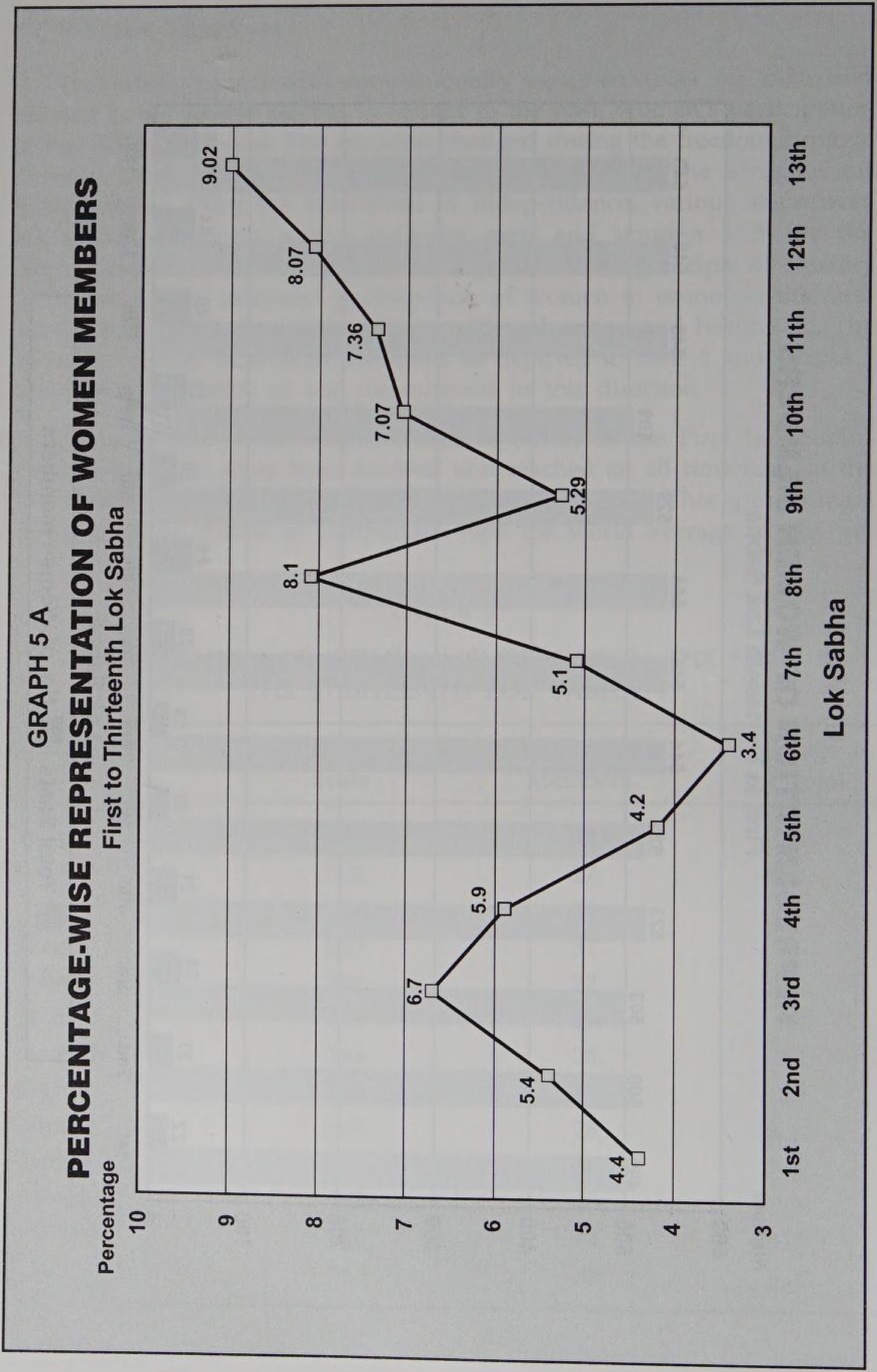
Lok Sabha	Total No. of Seats	No. of Women Members	Percentage to the total
First	499	22	4.4
Second	500	27	5.4
Third	503	34	6.7
Fourth	523	31	5.9
Fifth	521	22	4.2
Sixth	544	19	3.4
Seventh	544	28	5.1
Eighth	544	44	8.1
Ninth	529	28	5.29
Tenth	509	36	7.07
Eleventh	543	40	7.36
Twelfth	545	44	8.07
Thirteenth	543	49	9.02

GRAPH 5

REPRESENTATION OF WOMEN MEMBERS

First to Thirteenth Lok Sabha





GRAPH 5 A

PERCENTAGE-WISE REPRESENTATION OF WOMEN MEMBERS

First to Thirteenth Lok Sabha

The scenario, however, need not be considered as completely dispiriting as there are convincing reasons for likely change for the better. The commitment to providing an equitable share to women in representative institutions got a boost with the enactment of the 73rd and 74th Amendments to the Constitution, which provide for reservation of not less than one-third of the total seats in local bodies for women. Now, reservation of not less than one-third seats for women in the directly elected House of Parliament, *i.e.* the Lok Sabha as also in the State Legislative Assemblies, is sought to be made through the Constitution (Eighty-fifth Amendment) Bill, 1999, presently pending in the Lok Sabha.

V. Previous Legislative Experience

Table 6 indicates the position regarding previous legislative experience of members from the Seventh Lok Sabha onwards. It would be seen that the Seventh and Eighth Lok Sabhas had three members each having prior legislative experience in the Central Legislative Assembly and the Constituent Assembly. One member each of the Ninth Lok Sabha was having experience in the Central Legislative Assembly and Constituent Assembly. Eight members of the Seventh Lok Sabha, seven of the Eighth Lok Sabha and one each of the Ninth and Tenth Lok Sabhas had experience in the Provisional Parliament. The Eleventh, Twelfth and Thirteenth Lok Sabhas had no member holding experience in these pre-Lok Sabha legislative bodies.

Judging by number of members re-elected from the preceding to the succeeding Lok Sabha, it is evident from *Table 6 and Graph 6* that the representation of such members has never touched 50 per cent mark. Interestingly, only 143 (26.28%) members of the Seventh Lok Sabha were re-elected from the Sixth Lok Sabha. The Thirteenth Lok Sabha holds the distinction of having the maximum number of such members with 270 members (49.72 per cent) who were re-elected from the Twelfth Lok Sabha.

Table 6A shows prior legislative experience in Lok Sabha by number of terms held by members from the Seventh Lok Sabha onwards. The data reveals that, on an average, approximately one-fourth of the total members hold experience of only one Lok Sabha (one term). No member of the Thirteenth Lok Sabha holds the distinction of having served in all the previous twelve Lok Sabhas. However, Shri Indrajit Gupta (who died on 20 February 2001) had served in ten Lok Sabhas while Shri P.M. Sayeed has the distinction of having been elected to nine Lok Sabhas prior to his election to the Thirteenth Lok Sabha The Prime Minister, Shri Atal Bihari Vajpayee, Shri Somnath Chatterjee and Shri Madhavrao Scindia (who died on 30 September 2001) possessed legislative experience in eight previous Lok Sabhas.

TABLE 6

PREVIOUS LEGISLATIVE EXPERIENCE OF MEMBERS—SEVENTH TO THIRTEENTH LOK SABHA

Legislature	7th Lok Sabha	8th Lok Sabha	9th Lok Sabha	10th Lok Sabha	11th Lok Sabha	12th Lok Sabha	13th Lok Sabha
Central Legislative Assembly (1942-46)	3	3	1	Nil	Nil	Nil	Nil
Constituent Assembly (1946-50)	3	3	1	1	Nil	Nil	Nil
Provisional Parliament (1950-52)	8	7	1	1	Nil	Nil	Nil
First Lok Sabha (1952-57)	12	11	3	2	1	Nil	Nil
Second Lok Sabha (1957-62)	22	17	7	5	5	4	3
Third Lok Sabha (1962-67)	33	22	7	9	5	6	4
Fourth Lok Sabha (1967-70)	66	39	23	24	13	10	9
Fifth Lok Sabha (1971-77)	119	73	45	34	18	16	18
Sixth Lok Sabha (1977-80)	143	63	91	52	41	36	26
Seventh Lok Sabha (1980-84)	—	237	131	118	71	59	37
Eighth Lok Sabha (1984-89)	—	—	162	149	78	74	48
Ninth Lok Sabha (1989-91)	—	—	—	249	134	115	80
Tenth Lok Sabha (1991-96)	—	—	—	—	199	161	125
Eleventh Lok Sabha (1996-98)	—	—	—	—	—	253	206
Twelfth Lok Sabha (1998-99)	—	—	—	—	—	—	270
Council of States (Rajya Sabha)	31	10	19	25	14	46	41

GRAPH 6

RE-ELECTED FROM THE PRECEDING TO SUCCEEDING LOK SABHA
(Seventh to Thirteenth Lok Sabha)

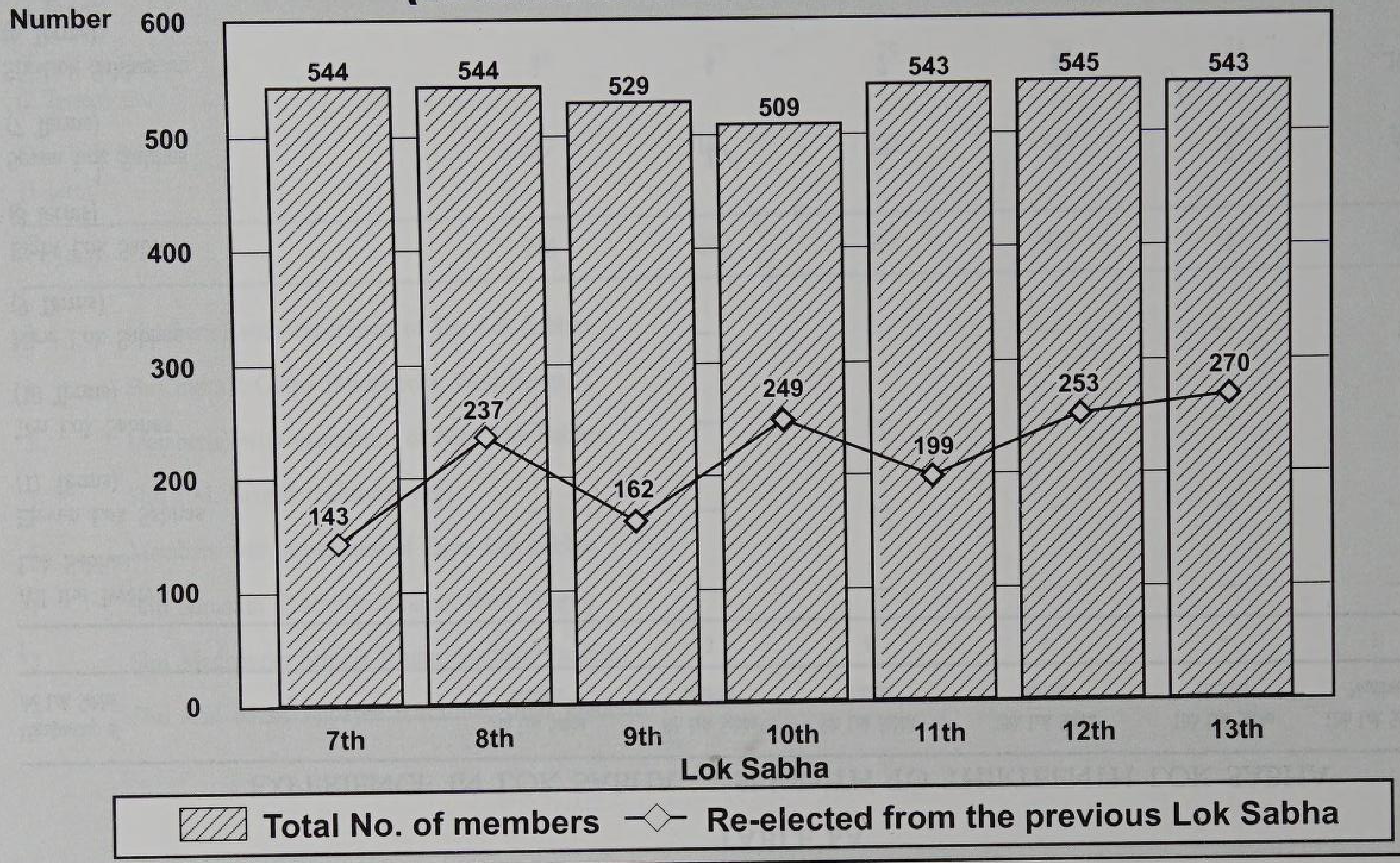


TABLE 6A

EXPERIENCE IN LOK SABHA — SEVENTH TO THIRTEENTH LOK SABHA

Membership of the Lok Sabha	7th Lok Sabha Number	8th Lok Sabha Number	9th Lok Sabha Number	10th Lok Sabha Number	11th Lok Sabha Number	12th Lok Sabha Number	13th Lok Sabha Number
1	2	3	4	5	6	7	8
All the Twelve Lok Sabhas	—	—	—	—	—	—	—
Eleven Lok Sabhas (11 Terms)	—	—	—	—	—	—	—
Ten Lok Sabhas (10 Terms)	—	—	—	—	—	—	1
Nine Lok Sabhas (9 Terms)	—	—	—	—	—	1	1
Eight Lok Sabhas (8 terms)	—	—	—	—	1	2	3
Seven Lok Sabhas (7 Terms)	—	1	—	3	2	3	4
Six Lok Sabhas (6 Terms)	2	4	2	4	5	10	13
Five Lok Sabhas (5 terms)	7	7	6	7	11	21	16
Four Lok Sabhas (4 Terms)	11	10	11	26	31	21	25

1	2	3	4	5	6	7	8
Three Lok Sabhas (3 Terms)	21	25	37	48	26	47	44
(Two Lok Sabhas (2 Terms)	58	57	75	89	74	76	110
One Lok Sabha (1 term)	117	166	122	143	95	147	145
Total	216	270	253	320	245	328	362

A. Member(s) with experience of Ten Lok Sabhas

1. Shri Indrajit Gutpa (Midnapore, West Bengal)

B. Member(s) with experience of Nine Lok Sabhas

1. Shri P.M. Sayeed (Lakshadweep)

C. Members with experience of Eight Lok Sabhas

1. Shri Somnath Chatterjee (Bolpur, West Bengal)
2. Shri Madhavrao Scindia (Guna, Madhya Pradesh)
3. Shri Atal Bihari Vajpayee (Lucknow, Uttar Pradesh)

Table 7 and *Graph 7* show position with regard to previous legislative experience of members of various Lok Sabhas. The Thirteenth Lok Sabha again has the maximum number of members possessing such an experience (362 members, constituting 66.67%). The Seventh Lok Sabha had the minimum number of such members (216, constituting 39.71%).

As regards ministerial positions or other parliamentary offices held by members, an increase is witnessed in the number of members having experience in such offices. *Table 8* and *Graph 8* provide information relating to members of the Thirteenth Lok Sabha. There are 87 members of the Thirteenth Lok Sabha who had been members of the Union Council of Ministers at one point of time or the other. The corresponding figure in the Twelfth and Eleventh Lok Sabhas was 86 and 76, respectively. The number of members of the Thirteenth Lok Sabha having experience of working as Ministers in the States is 84. There are seventeen former Chief Ministers, three former Speakers and two former Deputy Speakers of Lok Sabha, and nine former Speakers and seven former Deputy Speakers of State Legislative Assemblies in the current Lok Sabha.

Conclusion

The examination of bio-data of the members for all the thirteen Lok Sabhas has thrown up certain broad conclusions.

It shows that members belonging to the age group of 46-55 years have outnumbered other categories in majority of the thirteen Lok Sabhas. Preponderance of this age-group in the membership profile of the Lok Sabha is reflective of the electorate's preference for youthfulness coupled with experience and maturity in the personalities of their representatives. This apart, candidates belonging to other age-groups have also been successful in securing adequate representation in various Lok Sabhas.

TABLE 7

EXPERIENCE OF MEMBERS IN LOK SABHA SEVENTH TO THIRTEENTH LOK SABHA

Parliamentary Experience	Seventh Lok Sabha		Eighth Lok Sabha		Ninth Lok Sabha		Tenth Lok Sabha		Eleventh Lok Sabha		Twelfth Lok Sabha		Thirteenth Lok Sabha	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Total No. of members having previous Legislative Experience in Lok Sabha	216	39.71	270	49.63	253	47.83	320	62.87	245	45.12	328	60.18	362	66.67
No. of members not having previous Legislative Experience in Lok Sabha	328	60.29	274	50.37	276	52.17	189	37.13	298	54.88	217	39.82	181	33.33
Total	544		544		529		509		543		545		543	

GRAPH 7

PREVIOUS EXPERIENCE OF MEMBERS IN LOK SABHA

Seventh to Thirteenth Lok Sabha

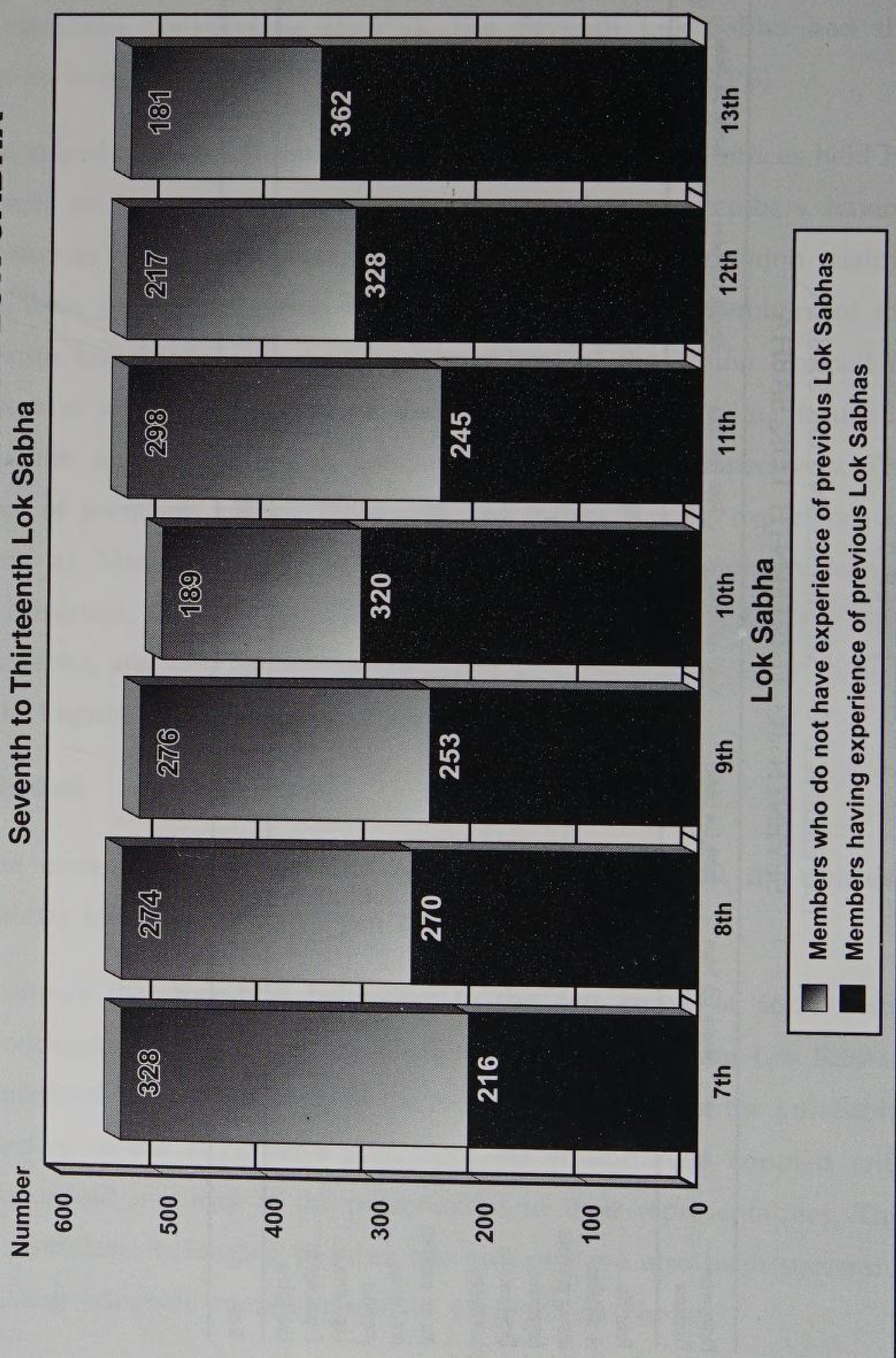


TABLE 8

MINISTERIAL POSITIONS OR OTHER PARLIAMENTARY/PUBLIC OFFICES HELD BY MEMBERS OF THE THIRTEENTH LOK SABHA

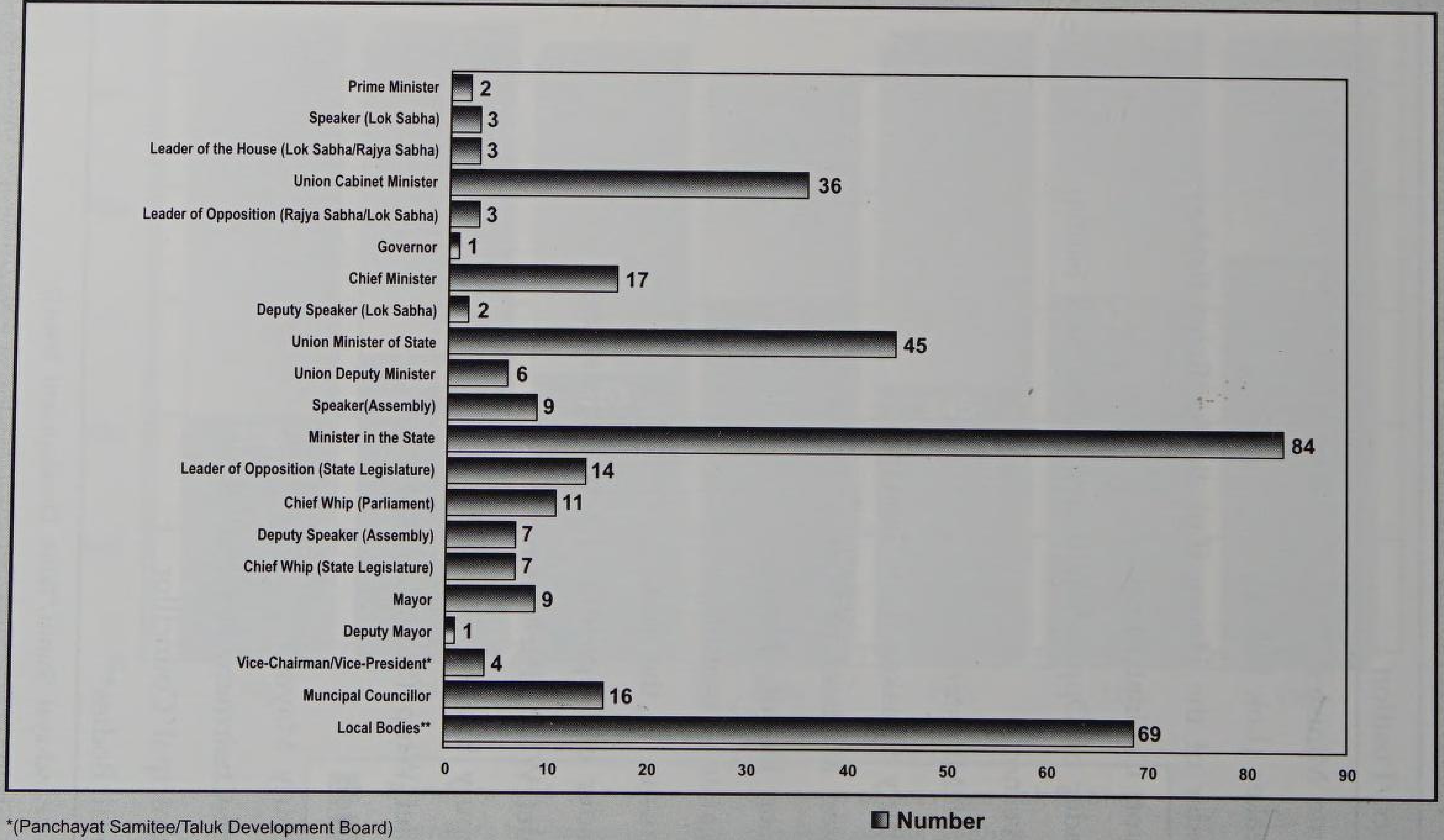
Office/Position	No.
Prime Minister	2
Speaker (Lok Sabha)	3
Leader of the House (Lok Sabha/Rajya Sabha)	3
Union Cabinet Minister	36
Leader of Opposition (Rajya Sabha/Lok Sabha)	3
Governor	1
Chief Minister	17
Deputy Speaker (Lok Sabha)	2
Union Minister of State	45
Union Deputy Minister	6
Speaker (Assembly)	9
Minister in the State	84
Leader of Opposition (State Legislature)	14
Chief Whip (Parliament)	11
Deputy Speaker (Assembly)	7
Chief Whip (State Legislature)	7
Mayor	9
Deputy Mayor	1
Vice-Chairman/Vice-President*	4
Municipal Councillor	16
Local Bodies**	69

* (Panchayat Samiti/Taluk Development Board)

** Chairman/President/Sarpanch, Municipal Body/Municipal Council or Committee or Zilla Parishad/Panchayat Samiti/Gram Panchayat

GRAPH 8

MINISTERIAL POSITIONS OR OTHER PARLIAMENTARY/PUBLIC OFFICES HELD BY MEMBERS OF 13TH LOK SABHA



*(Panchayat Samitee/Taluk Development Board)

**Chairman/President/Sarpanch, Municipal Body/Municipal Council or Committee or Zilla Parishad/Panchayat Samiti/Gram Panchayat

The educational profile of the Lok Sabha has also undergone a metamorphosis over the years. As education is one of the basic indicators of socio-economic status, it equips a person with the requisite intellectual skill and abilities which are necessary for a proper understanding of political and social obligations. In all the thirteen Lok Sabhas, members with at least graduation level have registered more representation than Under-Matriculates or Under-Graduates. Thus, as compared to 58.08 per cent in the First Lok Sabha, 80.29 per cent of the members of the Thirteenth Lok Sabha possessed educational qualifications of the level of graduation and above. The higher level of education equips members to be politically more informed and more responsive to popular demands. The overall trend indicates that the electors have favoured those who have had good education and who could relate to their aspirations and effectively articulate their grievances in the supreme legislative body.

Judging by occupational background, Agriculturists, as an occupational category, have been enjoying dominance over the other categories from the Third Lok Sabha onwards. While the percentage of Agriculturists has gone up from 22.45 per cent in the First Lok Sabha to 42.67 per cent in the Thirteenth Lok Sabha, there has been a steep fall in the representation of lawyers. The emergence of lawyers as the largest group in the First and Second Lok Sabhas may be attributed to the participation of a large number of lawyers in the national struggle for Independence and their subsequent election to the Lok Sabha. The proliferation of various other professional groups in the political process has also contributed to the decline in the number of lawyers.

Indian legislators have established their credentials as rational and time-tested agents of social welfare and economic change. The socio-economic background of legislators and its analysis, as attempted in this paper, would not only help us in understanding the general pattern of representation but also enrich our understanding of the political profile of our parliamentarians.

RAJYA SABHA—ITS ROLE AND FUNCTIONS

R.C. Tripathi

Introduction

The need or otherwise of a Second Chamber in parliamentary democracy has been a subject of intense debate and discussion amongst political scientists and statesmen. The Second Chamber has been described by some as conservative, traditional, outdated, expensive and even unrepresentative in some cases and, therefore, a hindrance to progress. On the other hand, there are those who feel that the Second Chamber is necessary to check hasty legislation due to various pulls and pressures of representative democracy and provide an opportunity to deliberate in a calmer atmosphere for the benefit of the society at large.

Evolution of Second Chamber in India

In India, the idea of a bicameral Legislature at the Centre did not start with the commencement of the Constitution after Independence. A Second Chamber at the Centre was, in fact, envisaged after much thought to its representational character and its role for the first time under the Government of India Act, 1919. The Act, *inter alia,* provided that the Central Legislature would consist of the Governor-General and two Houses namely, the Council of States and the House of Assembly. These bodies continued even after the Government of India Act, 1935 till 1947. The Constituent Assembly, which first met on 9 December 1946, also acted as the Central Legislature till 1950. Against this background of historical continuity, a Second Chamber at the Centre under our Constitution was a logical corollary. After much debate and deliberation in the Constituent Assembly regarding the utility or otherwise of a Second Chamber, the founding fathers finally decided for a bicameral Central Legislature. They chose a predominantly federal system as a feasible form of Government for a vast country like India. Naturally, therefore, a single directly elected House was not considered adequate by them to meet the challenges of development and the variety and complexity of problems which India had to encounter. Thus, they created the Council of States with an altogether different composition and method of election from that of the House of the People which was to be a directly elected House. The Council of States was conceived as a Second Chamber with a relatively smaller membership in which all the States were not represented equally in number as is the case in classical federations like USA, Australia and Switzerland. Provision was also made for the nomination to the Council of States of twelve members from amongst those who have distinguished themselves in literature, science, art and social service. In order to accord maturity to this House, the minimum age limit of thirty years was fixed for membership. The element of dignity and prestige was further added to the House by way of providing that the Vice-President of India would be the *ex officio* Chairman of the Rajya Sabha.

The powers and functions of the Council of States (Rajya Sabha) are commensurate with its constitutional position as envisaged by the framers of our Constitution. The role played by the Rajya Sabha during the last fifty years of its existence towards the promotion of parliamentary democracy amply proves the wisdom of the makers of modern India.

Legislative Functions

The Rajya Sabha, as one of the constituents of Parliament, has led to the consolidation of our democratic ethos and has played a pivotal role in social engineering. Both in terms of volume and content of legislation and the time devoted to the transaction of business, the Rajya Sabha has scrupulously adhered to its constitutional role. It has very effectively demonstrated its legislative competence in a number of areas. An analysis of the work of the Rajya Sabha since its inception will clearly demonstrate its role in our political system. Since 1952, the Rajya Sabha has witnessed the introduction of 734 Government Bills till the end of the One Hundred and Ninety-fourth Session (December 2001). From 1952 till December 2001, in a total of 2712 sittings during which Government Bills were introduced or considered, the Rajya Sabha considered 3118 Bills and passed a total of 3081 Bills. A close examination of these Bills will reveal that many of them have incorporated within their ambit issues of socio-economic, educational, legal and medical importance. Some of the most important Bills, having far-reaching implications in shaping the concept of a Welfare State, which were introduced in the Rajya Sabha are: The Hindu Marriage and Divorce Bill, 1952; the Hindu Minority and Guardianship Bill, 1953; the Hindu Succession Bill, 1954; the Monopolies and Restrictive Trade Practices Bill, 1967; the Medical Termination of Pregnancy Bill, 1969; the Code of Criminal Procedure Bill, 1970; the Prevention of Food Adulteration (Amendment) Bill, 1974; the Bonded Labour System (Abolition) Bill, 1976; the Equal Remuneration Bill, 1976; the Labour Welfare Fund Laws

(Amendment) Bill, 1986; the Indecent Representation of Women (Prohibition) Bill, 1986; the Suppression of Immoral Traffick in Women and Girls (Amendment) Bill, 1986; the Child Labour (Prohibition and Regulation) Bill, 1986; the Essential Commodities (Amendment) Bill, 1986; the Constitution (Scheduled Castes) Orders (Amendment) Bill, 1990; the Participation of Workers in Management Bill, 1990; the Indian Succession (Amendment) Bill, 1991; the Family Courts (Amendment) Bill, 1991; the Consumer Protection (Amendment) Bill, 1991; the Constitution (Scheduled Tribes) Order (Amendment) Bill, 1991; the Wildlife (Protection) Amendment Bill, 1991; the Rehabilitation Council of India Bill, 1992; the Beedi and Cigar Workers (Conditions of Employment) (Amendment) Bill, 1993; the Tezpur University Bill, 1993; the Sick Industrial Companies (Special Provisions) Amendment Bill, 1993; the Press Council (Amendment) Bill, 1994; the Coir Industry (Amendment) Bill, 1994; the Transplantation of Human Organs Bill, 1994; the Babasaheb Bhimrao Ambedkar University Bill, 1994; the Legal Services Authorities (Amendment) Bill, 1994; the Indian Penal Code (Amendment) Bill, 1995; the Assam University (Amendment) Bill, 1995, the Industrial Disputes (Amendment) Bill, 1996; the Employees Provident Funds and Miscellaneous Provisions (Amendment) Bill, 1996; the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions (Amendment) Bill, 1996; the Arbitration and Conciliation Bill, 1996; the Provisions of Panchayats (Extension to the Scheduled Areas) Bill, 1996; the Maulana Azad National Urdu University Bill, 1996; the Mahatma Gandhi Antarrashtriya Hindi Viswavidyalaya Bill, 1996; the Lalit Kala Akadami (Taking over of Management) Bill, 1997; the National Commission for Safai Karamcharis (Amendment) Bill, 1997; the Indira Gandhi National Open University (Amendment) Bill, 1997; the Delhi Development Authority (Validation of Disciplinary Powers) Bill, 1998; the Indian Majority (Amendment) Bill, 1999; the Marriage Laws (Amendment) Bill, 1999; the Trade Marks Bill, 1999; the Geographical Indications of Goods (Registration and Protection) Bill, 1999; the Mizoram University Bill, 2000; the National Housing Bank (Amendment) Bill, 2000; the All India Institute of Medical Sciences (Amendment) Bill, 2000; the Semiconductor Integrated Circuits Layout Design Bill, 2000; the Passport (Entry into India) Amendment Bill, 2000; the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2001; the Post Graduate Institute of Medical Education and Research, Chandigarh (Amendment) Bill, 2001; the Judicial Administration Laws (Repeal) Bill, 2001; the Trade Unions (Amendment) Bill, 2001; the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Bill, 2001; the Indian Medical Council (Amendment) Bill, 2001; the Indian Universities (Repeal) Bill, 2001; and the Indian Divorce (Amendment) Bill, 2001.

Private Members' Bills

Since a large part of the time of Parliament is devoted to the handling of Government legislative business, legislative initiatives by private members often do not succeed. Since 1952 upto the end of the one Hundred and Ninety-fourth Session (December, 2001), 1149 Private Members' Bills have been introduced out of which 291 were considered. So far, only fourteen Private Members' Bills have found place in the statute book, out of which five were introduced in the Rajya Sabha. These are: (i) the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) (Second Amendment) Bill, 1954; (ii) the Hindu Marriage (Amendment) Bill, 1956; (iii) the Indian Marine Insurance Bill, 1959; (iv) the Orphanages and other Charitable Homes (Supervision and Control) Bill, 1959; and (v) the Indian Penal Code (Amendment) Bill, 1963. The measure of success of a private member's legislation cannot be reckoned in terms of the number of Bills becoming Acts of Parliament. The strength of the procedure of private member's Bills lies in the opportunity they provide to members to actively participate in law-making.

Legislative Initiatives

The growing involvement of the Rajya Sabha in the numerous legislative measures is a testimony to the fact that though a Second Chamber, it cannot be treated as a secondary chamber. In matters of ordinary legislation, it has equal powers with that of the Lok Sabha. In a number of cases, the Rajya Sabha had recommended changes in the Bills passed by the Lok Sabha and those changes were, in fact, carried out eventually. The Income Tax (Amendment) Bill, 1961; the Prevention of Insults to National Honour Bill, 1971; the Urban Land (Ceiling and Regulation) Bill, 1976; the Government of Union Territories (Amendment) Bill, 1977; and the Delhi Administration (Amendment) Bill, 1977 are such instances in which the amendments made by the Rajya Sabha were accepted by the Lok Sabha. Similarly, the Delhi Apartment Ownership Bill, 1986; the Goa, Daman and Diu Reorganization Bill, 1987; the Prevention of Corruption Bill, 1988; the Bharat Petroleum Corporation Limited (Determination of Conditions of Employees) Bill, 1988; the Code of Criminal Procedure (Amendment) Bill, 1990; the Commissions of Inquiry (Amendment) Bill, 1990; the Prasar Bharati (Broadcasting Corporation of India) Bill, 1990; the Constitution (Scheduled Tribes) Order (Amendment) Bill, 1991; the Advocates (Amendment) Bill, 1992; the Passports (Amendment) Bill, 1993; the Small Industries Development Bank of India

(Amendment) Bill, 2000; the Madhya Pradesh Reorganization Bill, 2000; the Uttar Pradesh Reorganization Bill, 2000; the Bihar Reorganization Bill, 2000; and the Indian Council of World Affairs Bill, 2001 were also amended by the Rajya Sabha in the recent past.

The Rajya Sabha has not remained content with its role merely as a revising chamber. In a number of cases it has, in fact, asserted itself. In 1970, the Constitution (Twenty-fourth Amendment) Bill relating to the abolition of privy purses and privileges of the rulers of former Indian States which had already been passed by the Lok Sabha was defeated in the Rajya Sabha. The Rajya Sabha was also able to introduce amendments in the Constitution (Forty-fifth Amendment) Bill in 1978 which were accepted by the Lok Sabha and it became the Constitution (Forty-fourth Amendment) Act, 1978. This amending Act, *inter alia,* took away from the category of Fundamental Rights, the right to property and put the right to life and liberty on a secure footing. This Act also provided safeguards against the misuse of emergency provisions and guaranteed the right of the media to report freely the proceedings in Parliament and the State Legislatures. In 1989, the Constitution (Sixty-fourth Amendment) Bill and the Constitution (Sixty-fifth Amendment) Bill pertaining to the Panchayati Raj and Nagar Palika Institutions which had earlier been passed by the Lok Sabha were defeated in the Rajya Sabha.

The Rajya Sabha has on occasions amended the Motion of Thanks to the President for his Address. On 30 January 1980, an amendment to the Motion of Thanks on the Address by the President was adopted in the Rajya Sabha for the first time. This happened again on 29 December 1989 when the Rajya Sabha adopted six amendments to the Motion of Thanks to the President for his Address. On 12 March 2001, once again, the Motion of Thanks on the Address by the President was adopted in amended form.

Constituent Power

As far as the constituent power of the Parliament is concerned, the Rajya Sabha has equal power with the Lok Sabha. A Constitution Amendment Bill can be introduced in either House of Parliament and has to be passed by each House. In case there is any disagreement between the Lok Sabha and the Rajya Sabha, the Constitution Amendment Bill naturally falls through. There is no provision for a joint sitting of both the Houses to resolve a deadlock on a Constitution Amendment Bill. The Joint sitting of both the Houses can be convened to iron out only differences between the two Houses on an ordinary legislation. Some of the important

Constitution Amendment Bills introduced in the Rajya Sabha were the Constitution (Twenty-first Amendment) Bill, 1967, which aimed to add Sindhi as a language in the Eighth Schedule; the Constitution (Fifty-ninth Amendment) Bill, 1988 relating to the extension of President's rule in Punjab beyond specified time as the State was facing the worst kind of terrorism; the Constitution (Sixty-second Amendment) Bill, 1989, which sought to amend article 334 of the Constitution proposing to continue reservation for a further period of ten years beyond 20 December 1989 for members of the Scheduled Castes and Scheduled Tribes in the Legislatures; the Constitution (Seventy-sixth Amendment) Bill, 1992, which aimed at providing representation to the legislators of the Legislatures of the Union territories in the matter of election of the President; the Constitution (Eighty-first Amendment) Bill, 1994, which sought to include land reform laws of various States in the Ninth Schedule; and the Constitution (Eighty-sixth Amendment) Bill, 1999, which sought to provide a legal and constitutional basis for Panchayati Raj Institutions in Arunachal Pradesh in accordance with the socio-political ethos of the State.

Some Special Powers of Rajya Sabha

Apart from making laws and amending the Constitution, in several other matters too, the Rajya Sabha enjoys equal powers with the Lok Sabha. In approving a Proclamation of Emergency (article 352) and in relation to a State coming under President's rule (article 356) and any other subsequent Proclamations issued by the President during that period, the Rajya Sabha has been assigned equal powers with the Lok Sabha. It has been granted special powers in these matters especially when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place within the period allowed for the approval of the Proclamation. The Proclamation can remain effective if a resolution approving it is passed by the Rajya Sabha. For instance, the Rajya Sabha met in a brief Session on 28 February and 1 March 1977 to extend the period of President's rule in the States of Tamil Nadu and Nagaland. At that time, the Lok Sabha stood dissolved. Due to the dissolution of the Lok Sabha, a Session of the Rajya Sabha was also convened on 3-4 June 1991 to approve the Proclamation issued by the President under article 356 of the Constitution in relation to the State of Haryana. The Proclamation was approved by the Rajya Sabha on 4 June 1991.

Legislation on a Subject in the State List

The Constitution contains certain special provisions for Central intervention in the State legislative field. As an embodiment of the federal principle, the Rajya Sabha has been assigned two special powers in this regard. Under article 249, if the Rajya Sabha adopts a resolution by a majority of not less than two-thirds of the members present and voting, stating that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, Parliament will assume power to make laws for the whole or any part of the territory of India in respect of that subject.

Creation of All India Services

Again, under article 312, if the Rajya Sabha passes a resolution by a majority of not less than two-thirds of members present and voting declaring that it is necessary in the national interest to create one or more All-India Services common to both the Union and the States, Parliament will acquire the power to create by law such Services. Thus, in pursuance of a resolution passed by the Rajya Sabha on 6 December 1961, the Indian Service of Engineers, Indian Medical and Health Service and the Indian Forest Service were created. A similar resolution for the creation of the Indian Agricultural Service and the Indian Educational Service was passed by the House on 30 March 1965. The Constitution has given special powers to the Rajya Sabha as the resolution adopted by it by a specified majority would tantamount to the giving of consent by the States. The two-thirds majority has been prescribed as there is no equality in respect of the representation of the States in the Rajya Sabha.

Financial Functions

Though the Rajya Sabha has limited powers in financial matters, the role assigned to it in this regard is by no means insignificant. The Constitution provides that the annual Budget of the Union Government is to be laid before both the Houses of Parliament. The Rajya Sabha discusses both the Union and the Railway Budgets, though it does not vote on the Demands for Grants of various Ministries—a matter exclusively reserved for the Lok Sabha. No money, however, can be withdrawn from the Consolidated Fund of India, unless the Appropriation Bill is passed. Similarly, the Finance Bill also passes through the Rajya Sabha on which the Rajya Sabha can make its recommendations which may or may not be agreed to by the Lok Sabha. A new practice was started in 1970 whereby the working of a few select Ministries were discussed every year. Since these debates on Ministries entail no risk for the Government, the nature, character and efficacy of such debates differ vitally from those in the other House, bringing it to the notice of the public, the lapses and shortcomings, if any, of the Government. The debate on the Motion of Thanks on the Address by the President is also important in this connection, as it covers almost all aspects of the financial affairs of the country. The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union are also required to be laid before both the Houses of Parliament. Members of the Rajya Sabha are also associated with two of the three Financial Committees, namely, the Committee on Public Accounts and the Committee on Public Undertakings. Since 1993, members of the Rajya Sabha and the Lok Sabha serve on the seventeen Department-related Parliamentary Standing Committees, which also consider the Demands for Grants of related Ministries/Departments and report thereon. Though Money Bills are not introduced in the Rajya Sabha, such Bills are sent to it for concurrence and it can recommend changes to such Bills. In fact, the Rajya Sabha did recommend some amendments in some of the Money Bills. The amendments suggested by the Rajya Sabha to the Travancore-Cochin Appropriation (Vote on Account) Bill, 1956; the Union Duties of Excise (Distribution) Bill, 1957; and the Income Tax Bill, 1961 were accepted by the Lok Sabha. Apart from Money Bills, there are also certain categories of financial bills which cannot be introduced in the Rajya Sabha. As regards other financial bills, there is, however, no limitation on the powers of the Rajya Sabha and it has full power to reject or amend any such financial bill, and, such bill, as in the case of any other bill except a Money Bill, shall not be deemed to have been passed by the Houses of Parliament unless it has been passed by the Rajya Sabha.

Deliberative Functions

Apart from legislation, one of the important functions of the Parliament is to focus attention on matters of public importance, affecting policies of the Government and administration and to provide a forum for ventilation of public grievances. This responsibility is discharged through various time-tested procedural mechanisms as well as adoption of new procedural devices. As parliamentary institutions widen their scope of operation and seriously devote to the task of nation-building, the old rules and procedures need to be modified to meet the rising expectations of the people. Keeping pace with the time, the Rajya Sabha has brought about changes in its rules of procedure.

Procedural Initiatives and Innovations

Starting 1964, the first hour of every sitting of the House has been made available for the asking and answering of questions. Prior to this, questions were permitted on some specified days of the week. Innovations like Calling Attention and Short Duration Discussion which were then introduced provided new opportunities to strengthen parliamentary control over the Executive. Rules regarding petitions were also changed. Previously, petitions relating to pending Bills only were allowed. The modified rules incorporated more subjects on which petitions could be addressed to the House. Now, petitions can be presented on any matter of general public interest, barring the subjects which fall within the jurisdiction of a court of law and judicial and quasi-judicial bodies or matters which are not the concern of the Government of India and which can be raised through other procedural devices and for which remedy is available under the law. A cursory look at the various reports presented by the Committee on Petitions shows that the Committee has proved itself to be a valuable instrument for the redressal of public grievances. It has established itself as a forum which has brought the people nearer to Parliament.

The Committee on Rules, the Business Advisory Committee, the House Committee and the Committee of Privileges are important Committees of the House. Until July 2000, the General Purposes Committee which deals with matters concerning the affairs of the House did not find mention in the Rules of Procedure. Now the rules relating to this Committee have also been incorporated in the rule book.

Similarly, Special Mentions for raising matters of public importance were being made under the established conventions of the House. The procedure relating to Special Mentions now finds place in the Rules of Procedure.

Committee System

The Committee System in the Rajya Sabha was also revamped to cope with emerging challenges. Several new Committees were set up to manage the growing parliamentary activities. These include: the Committee on Subordinate Legislation; the Committee on Government Assurances; and the Committee on Papers Laid on the Table of the House.

Department-Related Standing Committees

With a view to further strengthening the Committee System, the two Houses of Parliament gave approval on 29 March 1993 for the setting up of seventeen Department-Related Standing Committees. Members of both the Houses serve on these Committees. Out of these, six Committees, *viz.*, Committees on Commerce; Home Affairs; Human Resource Development; Industry; Science and Technology; Environment and Forests; and Transport and Tourism, function under the direction and control of the Chairman, Rajya Sabha. These Committees encompass for scrutiny purpose within their ambit all Ministries and Departments of the Government. These Committees consider the Demands for Grants of the related Ministries/ Departments and report thereon; they also consider national, basic long term policy documents presented to the Houses, if referred to them by the Chairman or the Speaker, as the case may be, and report thereon. These Standing Committees do not consider matters of day-to-day administration of the related Ministries/Departments. The reports of these Standing Committees have persuasive value and are treated as considered advice; as a matter of fact, they have definitely strengthened the Executive by offering constructive criticism of the activities of the Ministries and Departments coming within their purview.

Ethics in Public Life

Moral and ethical concerns of the society weigh a great deal with those in public life as their behaviour is keenly watched by the people. Of late, there is a perception of a decline in the moral and ethical standards of those in public life. With a view to strengthening ethical and moral values in public life, members of Parliament have, on many occasions, expressed themselves in favour of evolving an internal self-regulatory mechanism. The formation of the Ethics Committee in the Rajya Sabha as one of the instruments to ensure value-based politics has been a step in that direction. The Ethics Committee of the Rajya Sabha was constituted by the Chairman, Rajya Sabha on 4 March 1997, with the mandate to oversee the moral and ethical conduct of members and to examine cases referred to it with reference to ethical and other misconduct of members. The Committee has presented two Reports to the House. In its First Report, the Committee, *inter alia,* suggested a framework of a Code of Conduct for the members of the Rajya Sabha. In its Second Report, the Committee dealt with aspects relating to the register of members interest; declaration of interests; procedure for making complaint and inquiry and penalties. It may be noted that the Committee, in its First Report, had suggested the feasibility of going in for open ballot in elections to the Rajya Sabha and the Legislative Councils in view of the emerging trend of cross voting. The Union Government has brought the Representation of the People (Amendment) Bill, 2001 in the Rajya Sabha in December 2001 which, *inter alia,* seeks to introduce open ballot in elections to the Rajya Sabha.

Adoption of New Technologies

In the wake of the adoption of new information and communication technologies for meeting the information requirements of members of

Parliament in a more efficient manner and on a wider scale and to put the efforts of computerization of the various services of the Rajya Sabha in an institutional framework, a Committee on Provision of Computers to Members of Rajya Sabha was constituted by the Chairman, Rajya Sabha on 18 March 1997. The Committee, *inter alia,* deals with matters relating to provision of computers and computer related information to members of Rajya Sabha, including internet and other applications for their use. It also reviews the hardware and software requirements of members.

MPLAD Scheme

As a large number of complaints were being received from members about the non-implementation of various items of work under the Member of Parliament Local Area Development Scheme (MPLADS), it was felt that there should be some effective monitoring mechanism so that proper and quick implementation of projects under the MPLAD Scheme could be achieved. With this end in view, the Committee on Member of Parliament Local Area Development Scheme was constituted in the Rajya Sabha on 5 September 1998.

Dignified, Responsive and Responsible House

One of the objectives of setting up of a Second Chamber is to provide opportunity for representation of seasoned and eminent people and facilitate dignified debate. Since its inception, the functioning of the Rajya Sabha has been marked by dignity and remarkable sensitiveness to public opinion. It has succeeded in combining dignity with intense activity. This is facilitated by providing opportunities to persons having special knowledge and experience in various fields of activity, who have contributed towards nation-building and socio-economic reconstruction of the society. Many eminent persons have served as members of the Rajya Sabha. Among them, we find a galaxy of scholars, educationists, historians, scientists, artists, poets, litterateurs, jurists, engineers, economists, administrators and social workers of outstanding eminence.

The Rajya Sabha has indeed carved out an important place in the Indian parliamentary set-up. Its dignified atmosphere has been sustained, among other factors, by the towering personalities of those who adorned the offices of Chairman and Deputy Chairman.

Even though the Council of Ministers is collectively responsible to the Lok Sabha, there are instances when members of the Rajya Sabha have been appointed as Prime Ministers. In 1966, for example, when Smt. Indira Gandhi was appointed as the Prime Minister, she was a member of the Rajya Sabha. Similarly, during the period of 1996-97, when Shri Deve Gowda and Shri Inder Kumar Gujral were appointed as Prime Ministers, they were members of the Rajya Sabha. Though in financial matters, the Lok Sabha has more powers compared to the Rajya Sabha, the portfolio of Finance has been largely held by those who were members of the Rajya Sabha. The former Finance Ministers, Shri Pranab Mukherjee, Shri S.B. Chavan, Shri Narayan Dutt Tiwari, Shri V.P. Singh, Shri Yashwant Sinha and Dr. Manmohan Singh belonged to the Rajya Sabha. Other important portfolios like External Affairs, Agriculture, Industry, Commerce, Planning and Programme Implemention and Tourism have also been held, at times, by members belonging to the Rajya Sabha.

Relationship with Lok Sabha

The history of the working of both the Houses of Parliament during the last fifty years would indicate that their relationship has been marked by a sense of cordiality, mutual respect and regard and cooperation in matters concerning the business of Parliament. A resolution was moved on 18 March 1954 in the Lok Sabha seeking to abolish the Rajya Sabha but it was negatived. Another resolution on the same lines was moved in the Lok Sabha on 30 March 1973. Some unsuccessful efforts were also made seeking to abolish the Rajya Sabha by way of introducing Constitution Amendment Bills by private members in 1971, 1972, 1975 and 1981. Notwithstanding these instances, occasional differences between the two Houses were resolved satisfactorily, laying a firm foundation for coordination and mutual consultation on matters affecting the Houses.

The end of the era of single party dominance and formation of Coalition Governments in different States and at the Centre have added a new dimension to the relationship between the two Houses of Parliament. A number of States are now ruled by a party or parties different from the one ruling at the Centre. And this fact has its impact not only on the composition of the Rajya Sabha but its general attitude on issues affecting the powers and jurisdiction of the States. A situation has emerged whereby the Government responsible to the Lok Sabha is finding itself in a minority in the Rajya Sabha. In the coming years, political observers may watch keenly the role played by the Rajya Sabha not only as a check and balance in the legislative sphere but also in handling the problems of federal adjustment made more complex and delicate by the far-reaching changes being brought about on the Indian political scene by the dynamics of electoral politics.

Conclusion

Thus, during the last fifty years of its existence, the Rajya Sabha has played a constructive and effective role in our polity. Its performance in the legislative field and in the formulation and influencing of the Government policies has been quite significant. The Rajya Sabha has, in fact, worked in a spirit of cooperation with the Lok Sabha as per the Constitutional mandate. It has prevented hasty legislation and has served as a dignified chamber representing the federal principle. As a federal chamber, it has worked for the unity and integrity of the nation and has reinforced the faith of the people in parliamentary democracy. Compared to many other Second Chambers in the world, the Rajya Sabha has, indeed, given a good account of itself in living upto the expectations of the people. Neither weak like the British House of Lords nor powerful like the US Senate, the Rajya Sabha has adhered to the time-tested middle path and, in the process, become a worthy example to many other Second Chambers around the world, more particularly to those in developing democracies.

PARLIAMENT REVISITED

Ajit Jogi

My debut in Indian Parliament was as a member of the Rajya Sabha in 1986. The late Shri Rajiv Gandhi not only gave me this splendid opportunity of a lifetime, but also virtually nursed my infancy in parliamentary life through care and compassion so characteristic of that great human being. The twelve years that I was a member of that House, gave me a ring side view of our great parliamentary tradition—but, only partially. Indeed, no education in the parliamentary school would be ever complete unless one has been a member of both the Houses at some point of time or the other. And, I must say that I was fortunate in this regard. My tenure in the House of the People further enriched my experience. Equally rare was the opportunity of having shared of the membership with so many distinguished parliamentarians of our times in both the Houses.

The repertoire of skills that I witnessed on display from some of our contemporary masters of parliamentary practice in both the Houses has, in all humility, I must admit, helped me become a better parliamentarian; and an even more staunch worshipper of democracy, by consciously attempting to imbibe, what one of our foremost parliamentary stalwarts, the Late Shri G.V. Mavalankar called the fostering of democratic spirit so very essential to make the parliamentary system effective and meaningful. I was deeply impressed with the display in the two Houses in terms of the quality of debates and the ability to empathize with the voices of the poor—and, all the while I was able to learn about the excruciating effort that is put behind their preparations by eminent members. I have taken this opportunity to revisit Parliament through this Commemorative Volume being brought out to mark the Fiftieth Anniversary of our Parliament. And, I do so by discussing the role of the Rajya Sabha in our parliamentary system in the particular context of the provisions under article 108 for joint sitting of the two Houses.

Imperative of Second Chamber in Our Polity

The Constitutional scheme envisages the President, the Council of States and the House of the People together constituting the Parliament of the Union. The presidential nominees apart, the Council of States—the Rajya Sabha—consists of the representatives of the States and of the Union territories. The advantages of bicameralism are many, particularly in a federal structure of polity such as ours. Each House has its own unique role in the parliamentary scheme. The founding fathers of our Constitution did not merely follow the other bicameral Legislatures while conceiving for us the concept of the Council of States. They were conscious of the fact that ours was not to be a bicameral Parliament like those in unitary polities. As was to be expected there were divergent opinions, and quite a few of them were opposed to constituting a Second Chamber.

Let us first look at the range of views expressed during the debates in the Constituent Assembly on the issue. Those who opposed the Council of States did so on the following arguments: that, it would not serve any useful purpose to have a Second Chamber; that Second Chambers were out of date; that its creation would result in so much waste of public money and so much waste of time. The arguments in favour of the Council of States ran somewhat as follows: that, such a House would offer opportunity for various people to take part in politics; that there was a need for a House where the "genius" of the people may have full play; that the second House could "checkmate", "whatever hasty legislation is passed by the lower House"; and that a "permanent body" was required which the House of the People was not. The Rajya Sabha was not created because the framers of Indian Constitution had any misgivings about any 'risks' of a unicameral Parliament exercising unbridled powers of legislation. Nor was the present arrangement conceived "to be a sobering House, a reviewing House, a House standing for quality". Nor again, was the Council of States conceived "to represent our past" unlike the representation of Princely Indian States provided under the earlier Government of India Act of 1935. So convinced was Baba Saheb Ambedkar of the need for a Council of States to keep the federal nature of our State intact that not only did he not accept any of the amendments at the end of the debate, but also did not think that any reply to the arguments against the Council was called for.

Role of Rajya Sabha in Joint Sitting

The framers of our Constitution were convinced that not only should we have a second House which should represent the States or units of the Union, but also that the relative size of the States in terms of population was adequately reflected in the composition of the Rajya Sabha. Our Second Chamber has a representative character even though it is only indirectly representative of our people. This is the reason why the framers of our

Constitution, after much deliberation, agreed to give it a distinct role while dealing with bills other than Money Bills; article 107 ensures that a Bill which is not a Money Bill shall not be deemed to have been passed by the Houses of Parliament unless agreed by both the Lok Sabha and the Rajya Sabha. This role also implies the possibility of differing perceptions in the two Houses and hence any possible deadlock is to be resolved through a joint sitting. Obviously, those in the Constituent Assembly who were opposed to the very concept of a Second Chamber found the provision for resolving the differences if any between the two Houses to be unwarranted. Some had felt that the Council of States should not have "an authority out of all proportions to its importance". The rationale against including a provision for joint sittings was mentioned to be the risk of "nearly equating" the Second Chamber with the House of the People. It was also "feared" that through the mechanism of joint sitting, the Upper House may succeed in giving effect to its wishes which it would otherwise not have succeeded in. One other argument put forward against the provision was that by the very nature of the tenure of its membership, the Rajya Sabha would not have more than one-third of its membership representing the "feelings of the people of the time", the other two-thirds being elected two or four years earlier! Therefore, ran the argument, the will of the people could prevail only if the Second Chamber had powers curtailed on the lines of the House of Lords. That our federal polity was dissimilar to the unitary constitutions and that the Rajya Sabha was not a hereditary institution, helped settle the issue *vis a vis* the comparison made with the House of Lords.

The Constituent Assembly did consider the option of not providing for a joint sitting in line with the American Constitution which allowed such Bills to lapse if the two Houses differed. However, it was felt by the learned framers of our Constitution that the solution of joint sitting would be most helpful in resolving the differences between the House of the People and the Council of States and for striking a balance between the voices of the people and those of the constituent States of the Union. A joint sitting did give the option of reconsideration by either of the Houses and of reconciliation where possible. While replying to the debate on incorporation of clause 88 (the present article 108), Dr. Ambedkar agreed that there was some amount of justification for the fear expressed in providing for joint sitting, but since it was not a novel provision—being part of several other Constitutions as well—it should be retained and seen as to what happened "in course of time".

The current controversy surrounding the Bill relating to the Prevention of Terrorism Ordinance which was sought to be introduced in the Winter

Session of Parliament in 2001 and the consequent suggestions emanating from some quarters as to the use of article 108 for pushing the enactment of POTO has thrown up several serious questions*. One of these is—assuming that the precondition therein that the Bill is first passed by the Lok Sabha and transmitted to the Rajya Sabha where the latter rejects it has been met—whether it would be desirable to resort to article 108 in a matter which has to essentially do with implementation and cooperation by the States, even though the subject of the security of States is in the Union List as well as in the Concurrent List and therefore fully within the competence of the Parliament. Even in matters listed in the domain of the State Legislatures (article 249), the Rajya Sabha has a significant role and rightly so, considering that it impinges on the States. The essence of article 249 is the consideration given to the Rajya Sabha being the representative body of the States of the Union. This consideration allowed to the Rajya Sabha ensures a delicate balance wherever matters relating to States are taken up. That this privilege resting with the Rajya Sabha is not merely limited to subjects in the State List is clear from the provisions of article 312 with regard to the All India Services whose members are common to the Union as well as the States. While the supremacy of the people is the cornerstone of democracy and therefore the will of the people must prevail generally in any federal structure of polity, ignoring the sentiments of the States as represented through the House constituted for the purpose, is equally undesirable.

The argument that a joint sitting could resolve the issue in such matters of contention or differences as between the two Houses presumes that the majority will of the House of the People is fully representative cutting across States. However, there could, in real terms, be situations where such a majority in the House of the People is due to bulk of the representation coming from only a handful of large States, leaving a majority of the smaller States of the Union being not represented in what comprises that majority. In other words, a simple majority at the joint sitting summoned under article 108 may also be entirely due to the numbers representing a handful of large States and not really reflective of the endorsement by the majority of the States. Indeed, quite the opposite can also happen—that of an overwhelming support within the Rajya Sabha, succeeding in rejecting at the joint sitting, a Bill passed by the House of the People, say, through a thin margin. In both these extremes, the joint sitting is hardly a remedy in ensuring balance in a federal democratic State.

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*The Prevention of Terrorism Act, 2002 was passed at a joint sitting of the Houses on 26 March 2002.

Reviewing Provisions of Joint Sitting

This leads me to suggest that while on issues where the States as units of the Union have little or no stakes, the resolution of differences between the two Houses through the mechanism of the joint sitting may even be done away with so that the voice of the people as represented by the Lok Sabha prevails. I would advocate that resorting to article 108 in matters that have to do with either law-making or implementation by the States is fraught with danger to the delicate federal balance. As I see it, there are three situations that could easily be provided for in terms of the roles of the two Houses. One, matters where the Lok Sabha, expressing the voice of the people, alone should have the final say, much in the nature of the Money Bills. Two, matters where the Rajya Sabha and thereby the voice of the constituent States of the Union ought to have the say that can not be ignored, something akin to a 'veto'. Three, in all matters where either of the Houses feels that reconciliation through a joint sitting is highly desirable. Obviously, the above prescription in differentially dealing with subjects affecting mainly the Union and those affecting the States is practical and useful in situations that are all too common these days—namely, of political differences between the vast majority of States and the formations at the Centre—and in such a scenario the present provisions of article 108 are of little use.

The solution, it seems to me, would be to give article 108 simultaneously the nuances of a unitary character by widening the scope of bills that would be treated at par with Money Bills and assigning only a limited role to the Rajya Sabha and at the same time, retaining the nuances of the federal character by assigning 'veto' powers to the Rajya Sabha in all matters impinging on States as well as on Centre-State relations. Both the Houses should also be free to resolve to take the matter to the President for summoning a joint sitting where, in the opinion of the House, it is so required. The "fears" that grant of vital powers to the Rajya Sabha would act as a check on the progress and the wishes of the people are indeed exaggerated considering the widely prevalent membership 'swap' between the two Houses, the composition of the Council of States being no less democratic than the other. I have no hesitation in suggesting that we have exhausted the "course of time" mentioned by Baba Saheb Ambedkar, and it is time to review the existing provisions of article 108.

FIFTY YEARS OF PARLIAMENT—CELEBRATING DIVERSITY, PLURALISM AND FREEDOM

Shashi Tharoor

The celebration of the Fiftieth Anniversary of the Indian Parliament commemorates an extraordinary achievement—the sustenance of democracy and representative institutions in a country seemingly divided by religion, region, caste, language and ethnicity. The singular thing about India, as I wrote in my book *India: From Midnight to the Millennium,* is that you can only speak of it in the plural. Yet, Parliament embodies that cliched truism, 'Unity in Diversity'. Its very survival as an embodiment of Indian nationhood prompts the question: what makes India a nation?

Nearly fifty-five years ago, at midnight on 15 August 1947, Independent India was born as its first Prime Minister, Jawaharlal Nehru, proclaimed, "a tryst with destiny—a moment which comes but rarely in history, when we pass from the old to the new, when an age ends and when the soul of a nation, long suppressed, finds utterance". With those words he launched India on a remarkable experiment in governance. Remarkable because it's happening at all. "India", Winston Churchill once said, "is merely a geographical expression. It is no more a single country than the Equator." Churchill was rarely right about India, but it is true that no other country in the world embraces the extraordinary mixture of ethnic groups, the profusion of mutually incomprehensible languages, the varieties of topography and climate, the diversity of religions and cultural practices and the range of levels of economic development that India does.

And yet India is more than the sum of its contradictions. It is a country held together, in Nehru's words, "by strong but invisible threads..." "She is a myth and an idea," he wrote, "a dream and a vision, and yet very real and present and pervasive."

How can one approach this land of snow peaks and tropical jungles with 18 major languages and 22,000 distinct "dialects" (including some spoken by more people than Danish or Norwegian), inhabited in the last year of the twentieth century by over a billion individuals of every ethnic extraction known to humanity? How does one come to terms with a country whose population is 51 per cent illiterate but which has educated the world's second-largest pool of trained scientists and engineers, whose teeming cities overflow, while four out of five Indians scratch a living from the soil? What is the clue to understanding a country rife with despair and disrepair, which nonetheless moved a Mughal Emperor to declaim, "if on earth there be paradise of bliss, it is this, it is this, it is this..."? How does one guage a culture which elevated non-violence to an effective moral principle, but whose freedom was born in blood and whose independence still soaks in it? How does one explain a land where peasant organizations and suspicious officials attempt to close down *Kentucky Fried Chicken* as a threat to the nation, where a former Prime Minister bitterly criticizes the sale of *Pepsi-Cola* "in a country where villagers don't have clean drinking water", and which yet invents more sophisticated software for US computer manufacturers than any other country in the world? How can one craft a Parliament for an ageless civilization that was the birthplace of four major religions, a dozen different traditions of classical dance, eighty-five major political parties and three hundred ways of cooking the potato?

The short answer is that there are many answers to these questions. Any truism about India can be immediately contradicted by another truism about India. It is often jokingly said that "anything you can say about India, the opposite is also true". The country's national motto, emblazoned on its governmental crest, is *Satyameva Jayate*: Truth Alone Triumphs. The question remains, however: whose truth? It is a question to which there are at least a billion answers, if the last census hasn't undercounted us again.

There is one Indian Parliament, but there are, in the hackneyed phrase, many Indias. Everything exists in countless variants. There is no single standard, no fixed stereotype, no "one way'. This pluralism is acknowledged in the way India arranges its own affairs: all groups, faiths, tastes and ideologies survive and contend for their place in the sun. At a time when most developing countries opted for authoritarian models of Government to promote nation-building and to direct development, India chose to be a multi-party democracy. And despite many stresses and strains, including twenty-one months of autocratic rule during a state of emergency declared by the Prime Minister, Indira Gandhi in 1975, a multi-party democracy—freewheeling, rumbustious, corrupt and inefficient, perhaps, but nonetheless flourishing—India has remained.

One result is that India strikes many as maddening, chaotic, inefficient and seemingly unpurposeful as it muddles through into the twenty-first century. Another, though, is that India is not just a country, it is an adventure, one in which all avenues are open and everything is possible. "India," wrote the British historian E.P. Thompson, "is perhaps the most, important country for the future of the world. All the convergent influences of the world run through this society....There is not a thought that is being thought in the West or East that is not active in some Indian mind".

That Indian mind has been shaped by remarkably diverse forces: ancient Hindu tradition, myth and scripture; the impact of Islam and Christianity; and two centuries of British colonial rule. The result is unique. Many observers have been astonished by India's survival as a pluralist state. But India could hardly have survived as anything else. Pluralism is a reality that emerges from the very nature of the country; it is a choice made inevitable by India's geography and reaffirmed by its history.

One of the few generalizations that can safely be made about India is that nothing can be taken for granted about the country. Not even its name: for the word India comes from the river Indus, which flows in Pakistan. That anomaly is easily explained, for what is today Pakistan was part of India until the country was partitioned by the departing British in 1947. (Yet each explanation breeds another anomaly. Pakistan was created as a homeland for India's Muslims, but—as at least till very recently—there were more Muslims in India than in Pakistan.)

Which brings us back to the question: what makes India, then, a nation? Amidst the popular ferment that made an Italian nation out of a mosaic of principalities and statelets, one Italian nationalist, Massimo Taparelli d'Azeglio, memorably wrote, "We have created Italy. Now all we need to do is to create Italians." Oddly enough, no Indian nationalist succumbed to the temptation to express the same thought—"we have created India; now all we need to do is to create Indians."

Such a sentiment would not, in any case, have occurred to Nehru, that pre-eminent voice of Indian nationalism, because he believed in the existence of India and Indians for millennia before he gave words to their longings; he would never have spoken of "creating" India or Indians, merely of being the agent for the reassertion of what had always existed but had been long suppressed. Nonetheless, the India that was born in 1947 was in a very real sense a new creation: a state that had made fellow citizens of the Ladakhi and the Laccadivian for the first time, that divided Punjabi from Punjabi for the first time, that asked the Keralite peasant to feel allegiance to a Kashmiri Pandit ruling in Delhi, also for the first time. Nehru would not have written of the challenge of "creating" Indians, but creating Indians was what, in fact, the nationalist movement did.

When India celebrated the Forty-ninth Anniversary of its Independence from British rule in 1996, its then Prime Minister, H.D. Deve Gowda, stood at the ramparts of Delhi's 16th century Red Fort and delivered the traditional Independence Day address to the nation in Hindi, India's "national language". Eight other Prime Ministers had done exactly the same thing forty-eight times before him, but what was unusual this time was that Deve Gowda, a southerner from the State of Karnataka, spoke to the country in a language of which he did not know a word. Tradition and politics required a speech in Hindi, so he gave one—the words having been written out for him in his native Kannada script in which, they, of course, made no sense.

Such an episode is almost inconceivable elsewhere, but it represents the best of the oddities that help make India. Only in India could a country be ruled by a man who does not understand its "national language"; only in India, for that matter, is there a "national language" which half the population does not understand; and only in India could this particular solution be found to enable the Prime Minister to address his people. One of Indian cinema's finest "playback singers", the Keralite K.J. Yesudas, sang his way to the top of the Hindi music charts with lyrics in that language written in the Malayalam script for him, but to see the same practice elevated to the Prime Ministerial address on Independence Day was a startling affirmation of Indian pluralism.

We are all minorities in India. A typical Indian stepping off a train, a Hindi speaking Hindu male from the Gangetic plain State of Uttar Pradesh, might cherish the illusion that he represents the "majority community", to use an expression much favoured by the less industrious of our journalists. But he does not. As a Hindu, he belongs to the faith adhered to by some 82 per cent of the population, but a majority of the country does not speak Hindi; a majority does not hail from Uttar Pradesh; and if he were visiting, say, Kerala, he would discover that a majority is not even male. Worse, our archetypal UP Hindu has only to mingle with the polyglot, polychrome crowds thronging any of India's major railway stations to realize how much of a minority he really is. Even his Hinduism is no guarantee of majorityhood, because his caste automatically places him in a minority as well: if he is a Brahmin, 90 per cent of his fellow Indians are not; if he is a Yadav, 85 per cent of Indians are not; and so on.

Or take language. The Constitution of India recognizes eighteen today, but in fact, there are thirty-five Indian languages which are spoken by more than a million people—and these are languages, with their own scripts, grammatical structures and cultural assumptions, not just dialects (and if one were to count dialects within these languages, there are more than 22,000). Each of the native speakers of these languages is in a linguistic minority, for none enjoys majority status in India. Thanks in part to the popularity of Bombay's Hindi cinema, Hindi is understood, if not always well spoken, by nearly half the population of India, but it is in no sense the language of the majority; indeed, its locutions, gender rules and script are unfamiliar to most Indians in the south or north-east.

Ethnicity further complicates the notion of a majority community. Most of the time, an Indian's name immediately reveals where he is from and what his mother tongue is; when we introduce ourselves we are advertising our origins. Despite some inter-marriage at the elite levels in the cities, Indians still largely remain endogamous, and a Bengali is easily distinguished from a Punjabi. The difference this reflects is often more apparent than the elements of commonality. A Karnataka Brahmin shares his Hindu faith with a Bihar Kurmi, but feels little identity with him in respect of appearance, dress, customs, tastes, language or political objectives. At the same time, a Tamil Hindu would feel that he has far more in common with a Tamil Christian or Muslim than with, say, a Haryanavi Jat with whom he formally shares a religion.

Why do I harp on these differences? Only to make the point that Indian nationalism is a rare animal indeed. It is not based on language (since we have at least eighteen or thirty-five depending on whether you follow the Constitution or the ethnolinguists). It is not based on geography (the natural geography of the sub-continent—framed by the mountains and the sea—has been hacked by the partition of 1947). It is not based on ethnicity (the "Indian" accommodates a diversity of racial types in which many Indians have more in common with foreigners than with other Indians—Indian Punjabis and Bengalis, for instance, have more in common with Pakistanis and Bangladeshis, respectively, than they do with Poonawalas or Bangaloreans). And it is not based on religion (we are home to every faith known to mankind, and Hinduism—a faith without a national organization, no established church or ecclesiastical hierarchy, no uniform beliefs or modes of worship—exemplifies as much our diversity as it does our common cultural heritage). Indian nationalism is the nationalism of an idea, the idea of an ever-ever land emerging from an ancient civilization, united by a shared history, sustained by pluralist democracy.

This land imposes no narrow conformities on its citizens: you can be many things and one thing. You can be a good Muslim, a good Keralite and a good Indian, all at once. Where Freudians note the distinctions that arise out of "the narcissism of minor differences", in India, we celebrate the commonality of major differences. To stand Michael Ignatieff's famous phrase on its head, we are a land of belonging rather than of blood.

So the idea of India is of one land embracing many. It is the idea that a nation may endure differences of caste, creed, colour, culture, cuisine, costume and custom, and still rally around a democratic consensus. That consensus is around the simple principle that in a democracy you don't really need to agree—except on the ground rules of how you will disagree. The reason India has survived all the stresses and strains that have beset it for fifty years, and that led so many to predict its imminent disintegration, is that it maintained consensus on how to manage without consensus.

Nations have been formed out of varying and different impulses. France and Thailand are the products of a once ruthless unifying monarchy, while Germany and the United States were created by sternly practical and yet visionary modernizing elites. Italy and Bangladesh are the results of mass movements led by messianic figures, Holland and Switzerland the creation of discrete cantons wishing to merge for their mutual protection. But it is only recently that race or ethnicity has again been seen as the basis of nationhood, as has become apparent in the prolonged breakup of the former Yugoslavia.

Most modern nations are the product of a fusion of population groups over the centuries, to the point where one element is indistinguishable from the next. The 19th century French historian Ernest Renan pointed out, for instance, that "an Englishman is indeed a type within the whole of humanity. However, [he]...is neither the Briton of Julius Caesar's time, nor the Anglo-Saxon of Hengist's time, nor the Dane of Canute's time nor the Norman of William the Conqueror's time; [he] is rather the result of all these." We cannot yet say the same of an Indian, because we are not yet the product of the kind of demographic fusion that Renan's Englishman represents.

So India cannot claim ethnicity as a uniting factor, since what we loosely have in common with each other as a generally recognizable "type" we also have in common with Pakistanis, Bangladeshis, Sri Lankans, Maldivians and Nepalese with whom we do not share a common political identity. Nor can we cite religion. Looking again at foreign models of the nation state, many scholars have pointed out that the adoption of Christianity by both conquerors and conquered helped the creation of the Western European nations, since it eliminated the distinction between ethnic groups in the society on the basis of their religion. But this is not a useful answer in India, for the reasons I have already described, and also because if this approach were to be adopted, nearly two hundred million Indians who do not share the faith of the majority would be excluded from any religiously-defined community (as non-Christian minorities amongst immigrants in Europe feel excluded today from full acceptance into their new societies).

A third element that has, historically, served to unite nations in other parts of the world is language. In Europe, conquerors and conquered rapidly came to speak the same language, usually that of the conquered. In India, attempts by Muslim conquerors to import Persian or Turkic languages never took root and, instead, the hybrid camp language called Urdu or Hindustani evolved as the language of both rulers and ruled in most of north India. But Hindi today has made very limited inroads into the south, east and north-east, so linguistic unity remains a distant prospect, (all the more so given that languages like Bengali, Malayalam and Tamil have a far richer cultural and literary tradition than the Hindi which seeks to supplant them). Our Parliament is a Babel of languages, but unlike its biblical counterpart, they serve a common purpose in differing accents.

Which brings us back, ineluctably, to pluralism and diversity. My generation grew up in an India where our sense of nationhood lay in the slogan, "unity in diversity". We were brought up to take pluralism for granted, and to reject the communalism that had partitioned the nation when the British left. In rejecting the case for Pakistan, Indian nationalism also rejected the very idea that religion should be a determinant of nationhood. We never fell into the insidious trap of agreeing that, since partition had established a state for Muslims, what remained was a state for Hindus. To accept the idea of India, you had to spurn the logic that had divided the country.

This was what that much abused term, "secularism", meant for us. Western dictionaries defined "secularism" as the absence of religion, but Indian secularism meant a profusion of religions, none of which was privileged by the state. Secularism in India did not mean irreligiousness, which even avowedly atheist parties like the Communists or the southern DMK party found unpopular amongst their voters; indeed, in Calcutta's annual Durga Puja, the Communist parties compete with each other to put up the most lavish Puja pandals. Rather, secularism meant, in the Indian tradition, multi-religiousness. I remember how, in the Calcutta neighbourhood where I lived during my high school years, the wail of the muezzin calling the Islamic faithful to prayer blended with the chant of the mantras at the Hindu *Shiva* temple and the crackling loudspeakers outside the Sikh gurudwara reciting verses from *Granth Sahib.*

Throughout the decades after Independence, the political culture of the country reflected these "secular" assumptions and attitudes. Though the Indian population was 82 per cent Hindu and the country had been partitioned as a result of a demand for a separate Muslim homeland, two of India's first five Presidents were Muslims; so were innumerable Governors, Cabinet Ministers, Chief Ministers of States, Ambassadors, Generals, and Supreme Court Justices. During the war with Pakistan in 1971, the Indian Air Force in the northern sector was commanded by a Muslim; the Army Commander was a Parsi, the General Officer Commanding the forces that marched into Bangladesh was a Sikh, and the General flown in to negotiate the surrender of the Pakistani forces in East Bengal was Jewish. That is India.

But the late twentieth century politics of deprivation has eroded the culture's confidence in its secularism. Religious chauvinism has emerged from the competition for resources in a contentious democracy. Politicians of all faiths across India seek to mobilize voters by appealing to narrow identities; by seeking votes in the name of religion, caste and region, they have urged voters to define themselves on these lines. As religion, caste and region have come to dominate public, to some it has become more important to be a Muslim, a Bodo or a Yadav than to be an Indian.

In my writings, I have consistently argued that an India that denies itself to some of us could end up being denied to all of us. The triumph of "narrow nationalisms" would amount to a second partition: and a partition in the Indian soul would be as bad as a partition in the Indian soil. For the overwhelming majority of Indians, the only possible idea of India is that of a nation greater than the sum of its parts.

And so the Indian identity that our Parliament incarnates celebrates diversity; if America is a melting-pot, then to me India is a *thali*, a selection of sumptuous dishes in different bowls. Each tastes different, and does not necessarily mix with the next, but they belong together on the same plate, and they complement each other in making the meal a satisfying repast.

This is where lies the great hope for the survival and success of India's pluralism. No one identity can ever triumph in India: both the country's chronic pluralism and the logic of the electoral marketplace make this impossible. There is no easy way to cope with India's diversity, but as Parliament demonstrates, democracy is the only technique that can work.

India's founding fathers wrote a Constitution for their dreams; we have given passports to their ideals. India is unusual in that democracy is not an elite preoccupation, but matters most strongly to ordinary people. Whereas in the United States, a majority of the poor do not vote, in India the poor turn out in great numbers because they know their votes make a difference.

The experiment begun five decades ago has worked. Though there have been major threats to the nation from separatist movements, caste conflicts and regional rivalries, political democracy has helped defuse them. Separatism in places as far afield as Tamil Nadu in the south and Mizoram in the north-east has been defused in one of the great unsung achievements of Indian democracy: Yesterday's secessionists have, in many cases, become today's Chief Ministers. The explosive potential of caste division has also been channelled through the ballot box. Most strikingly, the power of electoral numbers has given high office to the lowest of India's low. Who could have imagined, for 3000 years, that an "untouchable" woman would rule as the Chief Minister of India's most populous State? Yet Mayawati has done that twice in UP. In 1997, K.R. Narayanan, a Dalit, a former "untouchable" was elected the President of India. He leads an India whose injustices and inequalities he has keenly felt as a member of an underprivileged community; yet an India that offers through its brave if flawed experiment in constitutional democracy, secularism, affirmative governmental action and change through the ballot-box, the prospect of overcoming these injustices.

Corruption is being tackled by an activist Judiciary and by energetic investigative agencies that have not hesitated to indict the most powerful Indian politicians. The Rule of Law remains a vital Indian strength. Non-governmental organizations actively defend human rights, promoting environmentalism, fighting injustice. The Press is free, lively, irreverent, disdainful of sacred cows.

On my annual visits home, I discover that India is anything but the unchanging land of cliche. There is an extraordinary degree of change and ferment. Dramatic transformations are taking place in politics, in economics, in caste relations. Any one of these would have been remarkable in itself; all three simultaneously adds up to little short of a revolution in India. But it is a democratic revolution, sustained by a larger idea of India, an India which safeguards the common space available to each identity, an India that remains safe for diversity.

I believe in an India open to the contention of ideas and interests within it, unafraid of the prowess or the products of the outside world, wedded to the pluralism that is India's greatest strength, and determined to liberate and fulfil the creative energies of its people. And a free Parliament embodies, and symbolizes, these values, as well as the fact that such an India can make the 21st century its own.

For observers of India across the world, wary of the endless multiplication of sovereignties, hesitant before the clamour for ethnic division and religious self-assertion echoing in a hundred remote corners of the globe, there may be something to think about in this idea of India. It's a deceptively simple idea, familiar to developed democracies but few others, of a land where it doesn't (or shouldn't) matter what the colour of your skin is, the kind of food you eat, the sounds you make when you speak, the God you choose to worship (or not), so long as you want to play by the same rules as everybody else. If the overwhelming majority of a people share the political will for unity, if they wear the dust of a shared history on their foreheads and the mud of an uncertain future on their feet, and if they realize they are better off in Kozhikode or Kanpur dreaming the same dreams as those in Kolhapur or Kohima, a nation exists, celebrating diversity, pluralism and freedom. That is what India's Parliament stands for, and its Fiftieth Anniversary is all the more worth celebrating.

PARLIAMENT AS A VEHICLE OF SOCIAL CHANGE

A.A. Vakil

Introduction

The people of India rose in revolt against imperialism in an organized manner for the first time in 1857. Ever since, till the dawn of Independence in 1947, this struggle of the people against imperialistic power to enslave this brave nation continued unabated. In the process we had to face trials and tribulations and repression in many forms. The struggle gained momentum under the leadership of Mahatma Gandhi. The people of India gave unflinching support to the freedom struggle. The leaders of the freedom movement held out promises to be fulfilled once the freedom from imperialism was achieved and those promises were incorporated in the Preamble of the Indian Constitution. As ordained in the Constitution, we, the people of India, constituted ourselves into a Sovereign, Socialist, Secular, Democratic Republic and we sought to secure to all our citizens, justice, social, economic and political, as also liberty, equality and fraternity.

Parliament as an Instrument of Socio-economic Change

Parliament of India representing the sovereign will of the nation is not a structure of bricks and iron but a symbol of the sacrifices of the people of India. Parliament is an instrument of change, to translate into reality the promises held out in the Preamble of the Constitution. How far we have succeeded in this task needs to be analysed in the light of the experience of the past five decades. India is a vast country of one billion people; though endowed with rich natural resources, the fact of poverty and deprivation in certain villages of the country cannot be overlooked. India lives in the villages and the village population constitutes about 80 per cent of our total population. There are even today millions of people who do not have the basic necessities of life such as drinking water, educational facilities, medical facilities, roads and electricity. Parliament, as a vehicle of social change, should have addressed these stark realities adequately and effectively. Instead, regretfully, Parliament has become a victim of party politics and expediencies. This has caused great disappointment among the people.

Strengthening Federal Structure

India is a vast country with multiple faiths, languages and cultures and to keep it together, the federal structure of the nation has to be strengthened to inspire confidence in the constituents. Special attention needs to be paid towards the rural areas and small States.

Strengthening Democratic and Socialist Values

There is no denying the fact that since 1947 India has progressed in a number of areas, and has achieved a sound economy and credible international status. India is a democratic socialist country and it is for the Parliament to uphold and strengthen this way of life throughout the length and breadth of the country.

Combating Destructive Forces

There are forces within and without which have become very active and their activities threaten to destroy the peaceful social fabric of the society and the economic base of our country. To thwart and defeat such forces of destruction is the sacred responsibility of the Parliament. This can only be achieved when the Parliament as an effective vehicle of social change will reassert its authority, disregarding party and petty considerations and act for the country as a whole and its people.

Conclusion

At present, there is vast gap between the rich and the poor which is fast increasing. It is for the Parliament to ensure that the gap between the haves and have-nots is reduced to fulfil the promise of building a Welfare State held out to the people of India. In a successful parliamentary democratic system, money and muscle power will not be able to influence the electoral process. Parliament, as the guardian of people's rights and liberties, must effect changes in our electoral system which will keep at bay all those forces which are detrimental to the peaceful social order by introducing statutory changes in the relevant Acts and other laws. Parliament, as the symbol of sovereignty of the State, has to keep itself abreast of the changing socio-economic scenario to justify its existence as a vehicle of social change, and accordingly initiate measures to translate into reality the promises held out to the people as laid down in the Preamble of the Constitution of India.

PARLIAMENT AND PUBLIC POLICY—A CASE STUDY ON BONDED LABOUR

R.K. Tiwari*

Introduction

The poor in the unorganized sector in India have been sought to be uplifted through laws which derive their authority, acceptability and legitimacy from certain constitutional provisions. A number of regulatory laws have been promulgated since Independence for the protection of agricultural labourers, such as the Minimum Wages Act, 1948; the Contract Labour (Regulation and Abolition) Act, 1970; the Bonded Labour System (Abolition) Act, 1976; the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979, etc.

Bonded Labour in India

A section of the agricultural labour in India falls within the category commonly termed as 'bonded labour'. A labourer in this system usually borrows money and grain from the landlord under a contract which obliges him to work for him until the debt is repaid. This debt, unfortunately, never really gets repaid despite the nominal wages paid to him, frequent deductions from even this paltry amount and the long hours of work put in by the labourer and his entire family under duress. The servitude of bonded labour has become institutionalised and rooted in customs and practices in an agrarian economy and a feudal society. The pattern may slightly vary in different regions, but the type of exploitative relationship is essentially the same everywhere. These labourers are known by different names in different parts of the country.

Abolition of Bonded Labour : Early Initiatives

The Indian Slavery Act, 1843, was the first measure which aimed at checking the evil practice of agrarian serfdom. Different Provinces in pre-Independence India also enacted legislations which tried to prohibit this practice. This system, despite the legal sanctions, continued to operate. The International Labour Conference in 1930 adopted the convention requiring all member countries to abolish forced or bonded labour in all its form within the shortest possible period. This was accepted by the Government of India.

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*The author is grateful to Shri Ajay Singh Verma of IIPA, New Delhi, for the valuable assistance rendered in the completion of this article.

The strong public opinion created against this evil practice resulted in a number of States adopting legislation on the subject after Independence. The State Governments of Orissa, Andhra Pradesh, Tamil Nadu, Karnataka and Rajasthan enacted legislation for abolition of bonded labour, especially in the Scheduled Areas. However, an examination of these legislations and their enforcement revealed certain loopholes and lacunae. The definition of bonded labour was restricted and vague; excessive legalism and long-winded procedures existed; there was a lack of stringent provisions relating to punishments; the provisions for repudiation of and redemption from debts were inadequate; and finally, there was an absence of specific responsibilities for implementation and obligations for developmental assistance to bonded labourers.

The Annual Reports of the Commissioner for Scheduled Castes and Scheduled Tribes from 1951 to 1974-75 gave instances of the practice of bonded labour system in one form or the other in various parts of the country. The problem of bonded labour received serious attention of the Government and the Parliament, before whom these reports were placed. The purpose of this article is to examine the role of Parliament in the specific context of the debate and discussion on the Bill regarding bonded labour abolition and the subsequent problems in the implementation of the Bonded Labour System (Abolition) Act. For this purpose, a study was made on the deliberations at the time of the enactment of the legislation as well as subsequent deliberations on the implementation of the Act.

Parliament and Public Policy

In this background, the Union Government, in 1975, decided to enact a Central legislation to abolish the bonded labour system under article 252 of the Constitution extending its applicability throughout India. The initial impetus for this legislation came from the late Prime Minister, Smt. Indira Gandhi. In her broadcast on 1 January 1975, she said that "the practice of bonded labour is barbaric and will be abolished. All contract or other arrangements under which service of such bonded labourers are secured will be illegal." Subsequently, the abolition of the system of bonded labour was included as one of the items in the 20-point Programme announced by her on 1 July 1975. The Bonded Labour System (Abolition) Ordinance, 1975, was promulgated on 15 October 1975. The Ordinance was later replaced by an Act on 9 February 1976. This Act is a comprehensive piece of legislation which not only in broad terms defines and seeks to abolish the practice of bonded labour but also provides for the cancellation of bonded debt.

In a parliamentary form of Government, one of the functions of Parliament is to legislate. The role of the Executive is to propose legislations and policies necessary to achieve socio-economic objectives. Parliament gives its approval after the necessary deliberations and debate. As such, the Indian Parliament serves as a clearing house on all questions of policy and legislation.

The Bonded Labour System (Abolition) Ordinance, 1975

As the Parliament was not in Session, the Ministry of Labour prepared the draft bill in consultation with the Ministry of Law. The Ministry of Labour also sought the Cabinet approval to the promulgation of the proposed legislation as an Ordinance. The Bonded Labour System (Abolition) Ordinance, 1975 was promulgated on 15 October 1975. The important features of the Ordinance were:

- Abolition of the system of bonded labour.
- Extinguishment of the liability to repay bonded debts.
- Vesting implementing authorities with appropriate executive and judicial powers relating to cognizance, inquiry, prosecution and trials.
- Setting up Vigilance Committees at district and sub-divisional levels (these Committees would advise the implementing authorities on all matters relating to the enforcement of the Ordinance and also ensure the economic rehabilitation of the freed bonded labourers).
- Barring the jurisdiction of civil courts in matters covered by the Ordinance.

The Bonded Labour System (Abolition) Bill, 1976 which replaced the above Ordinance was introduced in the Rajya Sabha on 6 January 1976. The Rajya Sabha debated the Bill on 12 January 1976 and the Lok Sabha on 23 January and 27 January 1976.

Introduction of the Bill

The Minister of Labour, while moving the Bonded Labour System (Abolition) Bill, 1976 stated: "That the Bill to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental there to be taken into consideration."[1] The Minister further explained the mechanism of bondage:

> The system of bonded labour is the most anomolous remnant of feudalism still vitiating our society. It is the moral duty of the nation to abolish the system. Freedom can never endure with enclaves of bondage;.... The mechanics of the system are well known. ...Generation after generation become virtual slaves to the creditor. The entire future of the family becomes mortgaged to a small loan taken in the remote past, the debt becomes the destiny. That is how this system based on usury and feudal exploitation perpetuates unequal exchange for ages. The bonded labourer has no access to any commodity or capital market; he ceases to be a free economic agent; he is reduced to an appendage of feudal property. The debt thus dehumanizes him, he lives like a sub-man; he lives like a 'thing'. The system therefore not only dispossesses the labourer and also diverts him of his human essence... No civilisation can endure-half-free, half-bonded. Freedom that co-exists with sub-servitude is illusory.[2]

Speaking of the Bill, the Minister described its salient features: "all debts incurred by bonded labourers shall be deemed to have been liquidated; any act that stand in the way of the abolition of this system has been made a punishable offence... vigilance committees shall be constituted at the district and sub-divisional levels; officers of the State Government shall be vested with adequate powers in respect of inquiry, cognizance, prosecution and trial; and State Governments have been requested to utilise the Plan schemes for the rehabilitation of freed bonded labourers."[3]

Debate on the Bill

Most of the members who participated in the discussion on the Bill welcomed the proposed legislation. However, it was pointed out by many of them that there was a delay of more than twenty-six years after Independence in legislating upon this pernicious system. "We are giving liberation to those people who had lost it for no fault of their own but perhaps because of some loans or some debts which had been incurred by their predecessors or by their forefathers and who are still being treated mercilessly—a sort of exploitation which perhaps some other countries faced for quite a long time before."[4]

Some of the members also criticised political, social and religious organisations for not initiating action in this direction.[5] Participating in the discussion, Shri S.W. Dhabe pointed out that it was the first time that a battle for social and economic equality was being waged.[6] He welcomed the bill and pointed out that it was in line with the stand of the Human Rights Commission of the United Nations for abolition of slavery and discrimination against workers. He requested that the problem be taken above the party level and everybody must try to see that the abolition of bonded labour became a reality in life.[7] According to Shri Dhabe, the real reason for the prevalence of bonded labour "is to be traced to the existing socio-economic structure of our rural society, in which land is concentrated in the hands of a few upper caste people." He pointed out:

> Economic backwardness of the mass of peasantry is inherent in such a hierarchical structure. This causes indebtedness among the poorer classes to meet their minimum daily needs... With a small upper caste group controlling credit, trade and contracts for forest resources and public works, the rural poor have no choice but to work for them, sell to them their produce, buy from them and borrow from them. Ignorance and high interest rates ensure that the poor labourers are indebted in perpetuity even from generation to generation. Fear of reprisals, such as beatings, rape and false cases prevent their resort to law courts, even if within their means. The fear of helplessness has put them in such bondages.[8]

Another member Shri Biren Dutta pointed out that it was surprising that the system of bonded labour had been allowed to perpetuate in the country, though it was prohibited under the Constitution.[9] He further pointed out: "If the Government would have taken action according to the provisions of the Constitution against the money lenders who exploited the rural labourers in a most inhuman manner, there would have been no need for such a Bill..."[10] Shri Dutta also cited the report of the Commissioner for Scheduled Castes and Scheduled Tribes for providing information both in the incidence of bonded labour as well as specific names of the persons in some cases. He was of the view that the system was inherent in the village frame-work itself and unless we changed it, we could not abolish the bonded labour system. It was necessary to provide them land and cheap credit, otherwise they were bound to go to the same money lender for their survival.[11] Shri Dutta pointed out that the bonded labourers could not assert their rights as they were not organised and any attempt on the part of the agricultural workers organisations to help the bonded labourers to free themselves was seen as a threat by the landlords and money lenders.[12]

Some members were critical of the functions and composition of the vigilance committees at the district and sub-district levels. They were of the opinion that these committees alone could not solve the problem. For this purpose, some members were keen on the need for formation of vigilance committees which should include Scheduled Castes members; they also suggested that MPs, MLAs and trade unions be associated at the district and State levels. It was felt that this would generate confidence and also prevent the big cultivators in harassing the rural labour. Some members emphasised the need to have committees at the State and Central level to oversee the implementation of the Act.[13]

Taking part in the discussion, Shri Ramlal D. Parikh stressed that the resettlement of freed bonded labourers should have been made a legal obligation[14]. He suggested that instead of assigning the responsibility of identification of bonded labour to the District Magistrate, it would be better if special tribunals are constituted in every district for the purpose. He was of the opinion that rather than involving the normal routine machinery in this work, there must be a separate machinery to attend to the problem.[15] Shri Parikh emphasized that a special committee of members of Parliament should be constituted to make rules so that the Act could be implemented without delay. The member was of the view that such a committee was necessary because it took nearly a year or two to make the rules and the rules were made sometimes in such a way that they defeated the very purpose of the Act.[16]

Participating in the discussion, Shri Krishnarao Narayan Dhulap was critical of entrusting the function of rehabilitation to the vigilance committee at the district levels with District Magistrate as the Chairman. He pointed out that without providing alternative credit arrangements and employment opportunities, it would be difficult for the vigilance committees to provide for the economic and social rehabilitation of the freed bonded labourers.[17] Shri Dhulap further stressed that since the system of bonded labour implied the infringement of the basic human rights and the destruction of the dignity of human labour as pointed out in the statement of Objects and Reasons of the bill, the offence should be made non-bailable rather than bailable as provided in the bill.[18]

The implementation of the proposed legislation was another point which was made by many members during the discussion on the proposed bill. It was felt by a large number of members that it was difficult to implement such progressive legislation because reactionary forces would always try to stall and take away the initiative.[19] Regarding the problem of implementation, Shri Yogendra Sharma felt that the implementation of the

Act depended on the State Governments. He felt that it was not very encouraging in the light of the fact that as many as 21 States denied the presence of bonded labour in their regions.[20] There was criticism by the members of Parliament on the attitude of the State Governments in denying the presence of bonded labour in their regions. Reference was made to the denial by the State Governments of Gujarat, Tamil Nadu and Maharashtra.[21]

The Minister for Labour, while replying to the machinery established under the Act for identification and rehabilitation of bonded labourers, observed:

> We have made specifically a provision of abatement in the case of bonded labour in the case of any offence committed under this Act, and I would like to remind the officers who are to deal with the enforcement of this legislation either at the district level or at other levels that, if they keep quite when a matter is brought to their notice without taking any action or if they are slow or lethargic in taking action, I am afraid, by a proper interpretation of the concept of abatement in the IPC, these officers would be covered and their acts would attract these provisions if offences are brought to their notice and they keep quite. If I may say so...... this is a kind of revolutionary jurisprudence as far as the bonded labour is concerned.[22]

The Minister for Labour further pointed out the possibility of the constitution of watch dog committees at the Centre and State levels for this purpose. He mentioned that the district and sub-divisional level vigilance committees had been created because it was only at those levels that the problem could be effectively controlled. He further pointed out that by law half of the persons of the Committee would be Scheduled Castes and Scheduled Tribes and the rest would be social workers.[23] The Minister, while replying to the points raised by the members of Lok Sabha, observed: "The law passed by the Parliament is the law that is applicable to all parts of the country and no State can escape the provisions of the law... the law is applicable to each State and every officer who is mentioned in this enactment is bound to implement the law."[24]

Regarding the denial of existence of bonded labourers in some States and the steps necessary for the purpose, the Labour Minister pointed out that "various research institutes, especially the research institutes under the Commissioner for Scheduled Castes and Scheduled Tribes and the Director of Tribal Welfare, would be made effective use of for the purpose. Secondly, regarding the rehabilitation of the bonded labourers, it was pointed out by the Minister that "in each State the Government concerned should prepare and implement schemes for the social and economic rehabilitation of the emancipated bonded labour. The State Labour Departments would act as nodal points for co-ordinating the activities of the other Departments relating to bonded labour." Besides, in each State, the Labour Department, while preparing their Annual Plan, must include provisions for the purpose of rehabilitation of bonded labour.[25]

Parliament and the Enforcement of the Act

The enforcement of the Act by the various State Governments was also debated and discussed in the Parliament. During these debates, the replies given by the Union Minister of Labour, covered the following aspects:

- The Bonded Labour System (Abolition) Act, 1976, is a Central Act and the enforcement of the Act is the responsibility of the State Governments.
- The Union Ministry of Labour is repeatedly writing to all the State Governments regarding the identification of bonded labour, constitution of vigilance committees, timely release and rehabilitation, etc.
- Most of the States are denying the prevalence of bonded labour in their areas.
- The Union Government is encouraging voluntary organisations to take up the work of identification of bonded labour.

In the years that followed, Parliament had occasion to discuss the malaise of bonded labour several times. Thus, during the debates in Parliament, the members were critical of the implementation of the Act. Shri Indrajit Gupta said that "given the enormity of the problem and the lack of sensitivity of the administration to the plight of the labourers, not to speak of the pressure of the landed interests on the administrative machinery, the State cannot be relied upon to tackle this problem even marginally."[26] He called for a Committee of Parliament to look into the matter, as well as the rehabilitation of the released bonded labour.[27] Shri Gupta also said that though the Gandhi Peace Foundation estimated 26 lakh bonded labourers in the country, the State Governments had identified only 1,33,000 bonded labourers in ten States. As much, he urged the Union Government to get the identification work done to survey the incidence of bonded labourers in the States.[28]

There was acrimonious debate in the Lok Sabha in March 1982 when Shri Madhu Dandavate raised the question of bonded labour pertaining to Karnal district of Haryana on the basis of an interim order of the Supreme Court on 5 March 1982 to release the bonded labours working in the stone quarries in Faridabad and Karnal. He requested the Union Government to issue a White Paper on the position of the bonded labour in the country.[29]

Members were in unison that the enforcement of the Act was the responsibility of the State Governments and the role of the Union Government was limited to the extent of requesting these Governments to enforce the Act.[30] The Minister of State for Labour (Independent Charge) Shri Bhagwat Jha Azad, in his reply, pointed out that it was difficult for the Union Government and its agencies to survey the incidence of bondage all over the country. That work could only be done by State Governments. In this matter, the Union Government could only put pressure on the State Governments, give them guidance and advice, monitor their reports and suggest ways and means to intensify the effort.[31]

The Union Minister for Labour, Shri Veerendra Patil told the Rajya Sabha that the matter was discussed in a meeting of the National Development Council which was attended by Chief Ministers as well as other Ministers of the Union Government. Further, he said: "we have been repeatedly impressing upon the State Governments to take all possible steps to constitute vigilance committees at district levels and sub-divisional levels and also to take the co-operation of different non-official organisations. And we have been doing whatever is possible within our powers. We have been doing our best to impress upon the State Governments to take up this question of identification of bonded labour. If some of the States are not doing it, I don't know what to do. Some members say that in some States there is the incidence of bonded labour. When we ask that particular State Government, they say that in their States there is no bonded labour".[32] In 1983, the Minister of State in the Ministry of Labour and Rehabilitation, Shri Dharam Vir told the Lok Sabha that the responsibility for identification, release and rehabilitation of bonded labourers rests entirely with the State Governments who are the "Appropriate Governments" under the Act. The State Governments had been requested from time to time to take urgent and effective steps, including undertaking of intensive surveys in susceptible areas, to secure early release and rehabilitation of bonded labourers, wherever found existing.[33]

While replying to a debate on the issue of bonded labour, the Union Minister of Labour, Shri Veerendra Patil told the Lok Sabha in 1984:

> Although there is a Central Act, the enforcement of the Act is entirely on the shoulders of the State Governments. Simply because it is for the State Government or the State Government is the appropriate authority for

> implementing this Act, we are not keeping quiet. On the other hand, we are repeatedly writing to all the State Governments in this matter and we are sending our senior officers to the different States where there are incidents of bonded labour to find out how the Act is being implemented and how the bonded labour released is being rehabilitated. In the matter of rehabilitation, we have gone a step further and have agreed to meet fifty per cent of the cost that is required for rehabilitating the released bonded labour. ... the bonded labour is a continuing process. So far, all the States put together, only 11 have accepted the existence of bonded labour in their States. In spite of our repeatedly writing to all the State Governments, there are certain State Governments... who are sending back replies to us saying that in their State, bonded labour is not at all prevalent... I would like to know... when we get such a report, what is it that we can do? We can repeatedly write to them. I agree... that in the matter of identification, in the matter of giving relief to the people who are considered to be bonded labour, certain organisations... are also making their attempts to identify the bonded labour. I being in charge of the Ministry would like to make it clear that I am prepared to welcome all the voluntary organisations who are prepared to take up this work of identification of the bonded labour and whatever is possible to encourage such voluntary organisations, they will not find any shortcomings from my side. That is why I want to assure the Hon'ble members that we want to encourage more and more voluntary organisations to come into the field, to help and assist the State Governments in identifying the bonded labour.[34]

The question of the Central Government intervening in the identification of bonded labour came up for discussion in Parliament a number of times. Shri Chitta Basu suggested in 1984 that the Union Labour Ministry could appoint special task forces consisting of representatives of the Central Government Ministries to see whether these provisions of the Acts were being implemented or not by every State Government. It was also pointed out by him that it was incumbent upon the Government to implement these laws made by Parliament.[35]

Conclusion

In India, a majority of the rural population consists of landless agricultural labourers who suffer from a number of socio-economic disabilities. As such, a large number of laws to check the economic exploitation of the rural poor have been enacted. The enforcement of these laws constitute an important component of their development. In the enforcement of these laws, at times the bureaucracy is responsible for the distortions and poor execution; oftentimes, it is also due to the lack of political support. This lack of political support is basically a result of the local power structure and its linkage with the ruling elites and the prevailing socio-economic conditions in the countryside.

The deliberations in the Parliament on the Bonded Labour System (Abolition) Bill clearly demonstrated that the members of Parliament have a deep understanding of the socio-economic realities in the countryside. It is also evident from the debates that their understanding of the socio-economic structure of the rural society, economic backwardness of the landless labour, the grip over their lives by the rural elite, etc. have been pointed out time and again. It is also interesting to mention that members of Parliament were critical of the composition of the vigilance committees at the district and sub-district levels and the alternatives suggested by the Government in the bill for their rehabilitation. It is significant in this context to mention that all these criticisms turned out to be correct.

Members of Parliament were apprehensive even during the discussion on the bill about its implementation by various State Governments. In fact, a large part of the debate during the passage of the bill as mentioned in the previous section was confined to this aspect. However, this apprehension became more apparent in the subsequent years, as a large number of States denied the existence of bonded labour and even those States which acknowledged their prevalence in their areas tried to do the work of identification in a half-hearted manner. The attention given by the newspapers covering the atrocities and torture inflicted on the bonded labourers in various parts of the country prompted the members of Parliament to debate and discuss the problems, primarily in the context of the non-execution of the Act by the States.

The parliamentary debates since the passage of the bill have brought out some significant issues pertaining to the problems regarding non-enforcement of the Act by various State Governments. There is no doubt that the Constitution provides for enactment of progressive legislation in a large number of areas. The Union Government has also made use of this provision. However, its role afterwards is relegated to monitoring since the responsibility of the enforcement squarely lies with the State Governments. The Union Government can do very little, even if there are reports that the State Governments are not enforcing in letter and spirit the provisions of an Act. This is exactly what has happened in the case of the Bonded Labour System (Abolition) Act. It is true that the parliamentary debates over the last twenty-seven years kept the issue of bonded labour alive. In the parliamentary debates, the main emphasis has been on the indifferent attitude of the various State Governments in their identification and release.

The analysis made in this article clearly shows that the level of deliberations on each and every aspect of the bonded labour was of a very high order. There is a need to conduct more studies in a large number of areas of concern on the basis of the deliberations in Parliament on important questions. This will provide us wealth of information and insights in generating policy alternatives as well as in enabling a better understanding of the role of Parliament in public policy.

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[1] Raghunatha Reddy, K.V. 1976, *Rajya Sabha Debates*, 12 January. col. 100.

[2] *ibid.* cols. 99-100.

[3] *Ibid.* col. 102.

[4] Sardar Amjad Ali. 1976. *Ibid.* cols. 126-27.

[5] Tyagi, Om Prakash. 1976, in *Ibid.* col. 105 (in Hindi).

[6] Dhabe, S.W. 1976, in *ibid.* col. 111

[7] *Ibid.*

[8] *Ibid.* col. 112.

[9] Dutta, Biren. 1976, *Lok Sabha Debates*, 23 January, col. 162.

[10] *Ibid.* col. 162.

[11] *Ibid.* col. 163-64.

[12] *Ibid.* col. 164.

[13] Dhabe, S.W. 1976, *op.cit.* col. 113.

[14] Parikh, Ramlal D. 1976. in *Ibid.* col. 131.

[15] *Ibid.*

[16] *Ibid.* col. 132.

[17] Dhulap, Krishnarao Narayan, in *Ibid.* col. 138.

[18] *Ibid.* col. 139.

[19] Lakshmanan, G. 1976, *Rajya Sabha Debates*, 12 January. col. 117.

[20] Sharma, Yogendra. *Ibid.* cols. 118-20 (in Hindi).

[21] *Ibid.* col. 118-19.

[22] Raghunath Reddy, K.V. *op.cit.* 1976, col. 144-45.

[23] *Ibid.* 143.

[24] Raghunatha Reddy, K.V. 1976, *Lok Sabha Debates*, 27 January. col. 199.

[25] *Ibid.* col. 146.

[26] Gupta, Indrajit. 1984, *Lok Sabha Debates*, (48), 24 April. col. 373.

[27] *Ibid.* col. 341.

[28] *Ibid.*

[29] Dandavate, Madhu. 1982, *Lok Sabha Debates,* (25), 12 March. col. 364.

[30] Rawat, Harish. in *Ibid* col. 372 (in Hindi).

[31] Azad Bhagwat Jha. 1982, *op.cit.* col. 374 (in Hindi).

[32] Patil, Veerendra. 1982, *Rajya Sabha Debates,* (124), 11 October. col. 16.

[33] Dharmavir, 1983, *Lok Sabha Debates,* 22 February. col. 259-60.

[34] Patil, Veerendra. 1984, *Lok Sabha Debates* (47), 6 April. cols. 403-04.

[35] Basu, Chitta. 1984, *Lok Sabha Debates,* (47), 6 April. col. 412-13.

DOWN THE MEMORY LANE*

Kariya Munda

Introduction

13th December has left an indelible impression on my mind. The terrorist attack on the Parliament of India was a nightmare. It appears as if it was only yesterday when I left the Parliament House complex to reach my office at Krishi Bhavan at 11.15 a.m. and heard the gunshots. I came back to my residence at 12.30 p.m. There was confusion all around. I was continuously receiving phone calls from my friends and well-wishers. Everybody was concerned about my well-being and that of my colleagues. People throughout the country were watching the live telecast of the terrible tragedy that struck the country and were praying for the well-being of their representatives. I was really moved by the sentiments of my countrymen.

Overwhelmed by these feelings, I started moving down the memory lane. This year, I have completed twenty-five years of my parliamentary career. The sentiments of people were not very different at that time as well. Their expectations have also been more or less the same. It is only the style of working of the representatives of the people which has changed. The proposals to improve the lot of the poor and the suffering masses and to make them happy and prosperous have remained confined to the almirahs or have been lost somewhere in the maze of statistics worked out in the air conditioned rooms of the capitals. It is doubtful whether even a miniscule share of benefits of Five-Year Plans has actually percolated down to the backward and the downtrodden. Around one-third of our population is still living below the poverty line. To what extent have the poor people in the rural areas gained and lost on the economic front during the last few years? In fact, they have gained less and lost more. They have lost their land. Income has come down. The employment opportunities have come down. Migration to the cities has increased. Families stand divided. With unbalanced development, we cannot achieve the prosperity of the nation.

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*This is a translated version of the original article received in Hindi.

It was in Anigda, a village located amidst forests and a hilly terrain at a distance of about 450 kms from Patna, the capital city of Bihar, that I spent my early childhood, unaware of the ways of modern city life and major political developments. After my early education in the primary school in my village, I came to Ranchi for higher education. Ranchi was a small town those days. There I had a chance to meet people from different social strata and with different social backgrounds. From the very beginning, I had a passion for fighting the evils, superstitions and injustices prevalent in society. After seeing life outside of my village, my conscience pricked me and I became even more restless to strive for the uplift of society and to get justice for the exploited. I felt that lack of education is at the root of all problems being faced by the masses. Keeping this in mind, I paid attention to promotion and propagation of education. After coming back to my village from Ranchi, I built a residential High School for girls and thus laid the foundation for the propagation of education among women. After a lot of introspection in the next few years, I became active in the field of politics. I was elected to the Lok Sabha when I was 41 years old and thus I entered this supreme political institution of Parliament. This magnificent edifice had then dazzled this resident of village Anigda.

My first experience of the parliamentary proceedings was a very pleasant one. I learnt something new every day. New contacts and links were established. As I delve into the past, I feel that whatever I have learnt has become meaningless in the present context. There has been a constant decline in the standards of parliamentary behaviour. Meaningful discussions used to take place in Parliament earlier. Parliamentarians used to participate in the discussion after gaining full knowledge about the subject matter. The purpose of discussion was to find a solution to specific problems. After the eighties, it appears as if discussions are initiated with a view to creating a hurdle rather than finding a solution to specific problems. Representatives of the people and parliamentarians at times tend to ignore national issues. In many discussions, local issues and narrow politics have taken precedence over national issues. The ability to listen to others' point of view is required for a healthy discussion. Representatives of the people are required to have the virtues of patience, tolerance and discipline and only then can the agitated masses be pacified and efforts can be made for their development.

Even earlier, parliamentarians used to express their resentment by creating noisy scenes, slogan shouting and staging a walkout, but there used to be a limit to which the parliamentary decorum was violated. The business of the House was suspended or adjourned for a few hours and not for the entire day or for days at a stretch.

If we ponder on the changing circumstances, we will find that this change has come about mainly due to the entry of smaller parties into Parliament. To that extent, multiparty system is seen to be obstructing the development of the country. Smaller groups and parties have established several power centres in the Parliament and they are using their influence to increase the pressure on the ruling party. These powerful groups continue to indulge in such exercises to serve their own interests, thus capitalizing on the situation.

All these cause a lot of frustration and I feel completely helpless in such a situation. As I was reminiscing about my association with Parliament a loud explosion brought me back to reality. After a few minutes, I was told that this explosion was caused while destroying the explosives kept in the car brought in by the terrorists into the Parliament complex. By the immense grace of God and with the alertness of our security personnel, the sanctity of this holiest temple symbolising the aspirations of the people remained untouched. In these trying circumstances, it is incumbent upon us parliamentarians to guide the destiny of the nation in a very purposeful manner so that we could realize the goals which we set before ourselves fifty years ago.

A MOMENTOUS OCCASION

P.N. Bhagwati

The Parliament of India will be celebrating its Fiftieth Anniversary this year. India is the most populous democracy in the world and its Parliament has, during the last fifty years of its existence, established high traditions for itself, despite occasional aberrations. For those of us who had participated in the freedom struggle under the inspiring leadership of Mahatma Gandhi, this is a particularly momentous occasion. The freedom struggle brought out the best in the Indian people. That was a time when everyone in the country, irrespective of caste, creed or religion, was fired by tremendous enthusiasm; the younger generation was prepared to make any sacrifice that was required. The heralding of Independence on 15 August 1947 and the inauguration of Parliament under the newly framed Constitution of India were memorable events in the life of the nation. The first Parliament consisted of great stalwarts like Pandit Jawaharlal Nehru, Sardar Vallabhbhai Patel, Maulana Saheb and many others who had sacrificed their everything for the freedom of the country. They were persons who, by their example, inspired the nation.

But freedom fighters like myself sometimes feel sad that barring some exceptions there are no longer in our Parliament persons of such high intellectual calibre who are inspired by a sense of dedication, sacrifice and service. But even so, Parliament has done a remarkable job. It has brought on the statute book considerable amount of social welfare legislation intended to bring social justice to the people. Parliament has also acted as a healthy check on the functioning of the Executive Government. Even now, the level of debate in Parliament is fairly high and there are wonderfully eloquent speakers who would do credit to any Parliament. We need leaders in Parliament who are brought up in the great cultural tradition of India and who are intimately familiar, through personal experience, with the socio-economic conditions of the people and who are dedicated to the high and noble values which has characterized the history and culture of our great country for the last 5000 years. Our country, under the able guidance of Parliament, has made tremendous strides in science and technology. We can boast of some of the finest intellect who have made notable contribution to art, literature and physical sciences, apart from philosophy and metaphysics.

On this momentous occasion, we should be proud of being Indians and our prayer to the Almighty must be that if we have to be born again, let us be born again and again in this sacred land of *Bharat*.

WHY I ADORE OUR PARLIAMENT?

R.P. Goenka

How time flies? It looks as if only the other day, I read in the newspapers about the formation of free India's first Parliament. I was then only twenty, not knowing that one day, almost half-a-century later, I myself will be a part of the parliamentary process, as a member of the Rajya Sabha.

One may ask, is it too late to start one's parliamentary career around seventy? There are two schools of thought. One school says that whatever you want to do, do it early in life; after you are fifty, all roads should lead to the forest. The other school says that nothing is too late. If Tolstoy could learn how to ride the bicycle at the age of seventy, if Krishnadas Kabiraj Goswami at the age of seventy could take upon the responsibility of writing the monumental *Shree Shree Chaitanya Charitamrita*, why can't one become a student of parliamentary procedures at the age of seventy?

Coming back to my point ... time really flies. The Indian Parliament is stepping into its Golden Jubilee year. Those who can recall the early years of our freedom, around 1947, will remember what those skeptics used to say. They unknowingly repeated what our subjugators used to circulate earlier. Is India fit for democracy? Can India afford democracy? Last but not the least, does India deserve democracy?

Those were the days, when with our new found freedom, the whole nation depended on a few outstanding men to chalk out its route map to reach where the mind is without fear and the head is held high.

Yes! The journey during the first fifty years has been tumultuous. The midnight tryst with destiny, which began on 15 August 1947, has indeed been a crucial one with lots of ups and lots of downs. On looking back after fifty years, one can, in all humility, claim that the Indian experiment with parliamentary democracy has been a success.

The Golden Jubilee of Parliament is perhaps the right time to recall the contributions of the founding fathers of Indian democracy: their foresight, their trust in the power of democracy, their faith in the Rule of

Law, and above all, their absolute faith in those to whom the Constitution of India is dedicated—we, the people of India.

Many confusing questions have been raised in the past. What is India? Are we one people? Can India ever be united? Is chaos the other name of India? Can an illiterate population form the backbone of a genuine democracy? Over the past fifty years, these questions have come up again and again before democratic India in many forms. Where is our unity? What is India practising—is it democracy? Can democracy survive when people are so poor and so undernourished?

What is wonderful is that our parliamentary democracy, with all its faults, has withstood every type of pressure that a nation in the 20th century could have been subjected to. Our parliamentary system has responded to challenges coming in waves within a very short span of time. What the more fortunate nations had faced and solved over a span of five hundred years, we had to solve in fifty years.

Today, India stands triumphantly adding a new chapter to the world history of parliamentary democracy. That India is the world's largest working democracy, involving a billion people—one-sixth of the world's entire population—is no mean achievement. Those who criticize our parliamentary democracy have at least this much to concede that at the beginning of the Third Millennium, there are not many countries on the world map which can truly be proud of its democracy.

It is said that the test of democracy is in the effectiveness of the people in replacing a Government whenever they want it. Today, the world is full of nations where people no longer enjoy this privilege. Let us look at India. We have seen great Prime Ministers, mighty political parties. We have witnessed unprecedented achievements backed by unprecedented power. And yet the small ballot box that leads you to a seat in the Parliament has often shaken the entire nation.

Searching for a philosophic angle to our tryst with Parliament, one feels tempted to read Rabindranath Tagore, when he writes:

Vast islands have sunk in the abyss unnamed,
stars have been beggared of the last flicker of their light,
countless epochs have lost all their ladings.

World-conquerers have vanished into the shadow of name
behind dim legends,
great nations raised their towers of triumph
as a mere offering to the unappeasable hunger of the dust.

Among this dissolving crowd of the discarded
my forehead receives the consecration of light,
and this is an endless wonder.
The centuries on which have flashed up and foundered
Kingly crowns like bubbles
have left their signature on the bark of this aged tree,
where I am allowed to sit under its ancient shade for one more day,
and this is an endless wonder.

Fifty years is quite a long timeframe for an individual, but it is merely a dot for a nation. In a true democracy, the Parliament reflects the people. If the Indian Parliament remains a true reflection of the people of India, the next fifty years will be much more meaningful for our Parliament.

PART II : CONSTITUTION AT WORK

THE PRESIDENT OF INDIA—ROLE, POWERS AND RESPONSIBILITIES

R. Venkataraman

Introduction

In my farewell address to members of Parliament, I stated that the President of India is not an appellate or supervisory authority over the Prime Minister and that the President is like an 'emergency lamp', which becomes active when power fails and becomes dormant when power is restored. I am not unaware that eminent jurists and occasionally leaders of political parties think differently and would wish the President to give an extended interpretation to his oath of office, namely to "preserve, protect and defend the Constitution and the law". It is, therefore, useful to examine the position of the President in the governance of our nation.

Parliamentary System of Governance

India deliberately chose the British model of parliamentary democracy. This is clear from the debates of the Constituent Assembly. Dr. K.M. Munshi, one of the architects of the Constitution, explained the rationale for reaching the decision. He said: "Most of us, and during the last several generations before us, public men of India have looked upon the British model as the best. For the last thirty-five or forty years, some kind of responsibility has been introduced in the governance of the country. After this experience, why should we go back on the tradition that has been built for over hundred years?" Many of the stalwarts of the freedom struggle have had education in England and had developed a fascination for the British parliamentary system. Besides, Britain was at that time a super power with an empire spread over the globe.

During the Constituent Assembly debates, Dr. Ambedkar repeatedly emphasized that we have chosen the British model of Government. The most authentic statement regarding the nature of the Constitution came from Dr. Ambedkar when he moved for the consideration of the draft Constitution by the Constituent Assembly on 4 November 1948. He said: "A student of Constitutional law, if a copy of the Constitution is placed in his hands, is sure to ask two questions. Firstly, what is the form of *government* that is envisaged in the *Constitution* and secondly what is the *form of the Constitution*?" Answering the two questions, Dr. Ambedkar explained with extraordinary lucidity:

> Under the draft Constitution, the President occupies the same position as the king under the English Constitution. He is the Head of the State but not of the Executive. He represents the nation but does not rule the nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device or seal by which the nation's decisions are made known... The President of the United States is not bound to accept the advice tendered to him by any of his Secretaries. The President of the Indian Union will be *generally* (emphasis supplied) bound by the advice of his Ministers. He cannot do anything contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so as long as his Ministers command the majority in Parliament.

Position of the President of India *vis a vis* the Crown of England

A bird's eyeview of the constitutional history of England establishes that the devolution of powers from the Crown to Parliament took place over centuries and even though every conceivable power has devolved on Parliament, yet the residue, if any, legally remains vested in the Crown of England. In contrast, the President of India is a creature of the statute. He has only such powers and privileges as are granted by the Constitution—no more and no less. The Constitution defines the powers of the President, Parliament and the Judiciary and each has to act within the prescribed powers and limitations under the Constitution. There is no residual power vested in the President of India as in the Crown of England.

Furthermore, British conventions have been incorporated as express provisions in the Indian Constitution leaving not much of discretion with the President of India. A few examples may be cited.

The British conventions namely:

- that the Crown must invite the leader of the party or group commanding the majority of the House of Commons to form the Ministry is embodied in article 75 that the President shall appoint the Prime Minister and that the Council of Ministers shall be collectively responsible to the House of the People.

- that the Crown must appoint other Ministers such persons as the Prime Minister advises, is embodied in article 75(1). Neither can the President refuse to appoint a person recommended by the Prime Minister nor appoint a person not recommended by the Prime Minister.
- that the Crown is bound to exercise its legal powers in accordance with the advice tendered to her by the Cabinet through the Prime Minister, is found in article 74(1) of our Constitution.
- that the Crown must assent to every Bill that may be passed by the Houses of Parliament is implied in article 111 as the power to withhold assent may be exercised only on the advice of the Council of Ministers.

Besides, even before the Constitution Forty-second Amendment, the Supreme Court in *Shamsher Singh's case* in 1974 held that the President was only a constitutional head and was bound to act in accordance with the advice of the Council of Ministers. Ivor Jennings stated positively that "the President of India is essentially a constitutional monarch. The machinery of Government is essentially British and the whole collection of British conventions has apparently been incorporated as conventions". The foregoing narration clearly establishes that the powers of the President are no more and no less than those of the British Crown.

Constitutional Conventions in England and in India

A study of the statute law relating to a nation without the conventions will be incomplete and may lead to distortion. Constitutional conventions consist of various customs, practices, maxims and precepts of political ethics. Statutes and conventions together constitute the Constitutional Law of the land. The formal distinction that conventions are not laws, though they are of importance from the legal standpoint, also is not of much relevance to the politician, the sovereign and the statesman who regard the conventions binding on them.

The most important function of the Crown in England and that of the President of India is the appointment of a Prime Minister. As Ivor Jennings said: "The King has one, and only one function of primary importance. It is the appointment of the Prime Minister." It is a well-established convention in both England and India that if after the General Elections, a single party secures a majority of the House, its leader must be appointed as Prime Minister. As Ivor Jennings put it: "If a party secures a majority of the House and that party has a leader, that leader must become the Prime Minister."

There are, however, a number of grey areas where the Constitution is silent on what the President should do as for instance when no party secures a majority in Parliament after the General Elections. In an essentially bi-polar party system as in Britain, one or the other party secures a majority and, therefore, there is no clear British convention in that regard. Such a situation arose in India after the General Elections to the Union Government in 1989. The Congress, though not the majority party, was the largest single unit with Janata Dal, BJP and others in descending order of strength. After the elections, the Opposition parties agreed among themselves to support the Janata Dal from outside without forming a coalition. The issue before the President was: who should be invited to form the Government?

There was one precedent in Britain, though by no means a convention, where the Crown was faced with a similar situation. In 1923, Baldwin, the Conservative Prime Minister, advised the King to dissolve the House as he wanted to get a mandate from the people for his tariff policy and the Crown accepted it.

In the General Elections which followed in December 1923, the Conservative Government was defeated but still remained the largest single party with Labour and Liberals in descending order of strength. In these circumstances, King George V said, if Baldwin wished to resign, he (the King) would refuse on the ground that he is still the head of the largest single party in the House of Commons.[1] When Baldwin was defeated in the House in January 1924 on the address to the throne, the King had the option either of calling Ramsay McDonald, the leader of the Labour Party with 191 members, or Asquith, the leader of the Liberal Party with 159 members.

The King invited Ramsay McDonald "as the leader of the next largest party in the Commons to form the administration".[2] The point to be noted is that the Crown called on the next largest party and did not attempt to divine whether the Labour or the Liberal Party had the best chance of forming a stable Government.

Appointing the Prime Minister

The Congress which was defeated in the polls in 1989 but which had the largest membership in the Lok Sabha did not stake its claim to form the Government. Rajiv Gandhi, realising the mood of the nation wisely, decided not to press his claims. The President, following the British precedent cited above, called on the next party in order of strength, namely the Janata Dal headed by V.P. Singh, to form the Government. When other political parties later met the President, he told them that he had called the next largest party to form the Government and that it was for the other parties to demonstrate their support in the House.[3]

Some jurists have argued that the President's goal must obviously be to get a viable Government and that he should be free to call any person who, in his opinion, is able to provide one for the country. But neither the Constitution of India nor the British conventions envisage an active role for the President or the Crown in this behalf. They act as umpires rather than as promoters. The Sarkaria Commission, while laying down guidelines for Governors in the choice of the party for forming the Government, said failing a party with absolute majority, a combination of parties which is able to command a majority in the House should be given the next opportunity.

This proposition is unassailable if the combination of parties came into existence before the election and fought on one manifesto or one symbol. If the combination is formed after the elections, there is no mandate for it from the electorate. Besides, this introduces an element of subjective judgment on the part of the President and the Governor in the choice and exposes them to the charge of partisanship or biased decisions.

Occasions, when no party had a majority in the State Assemblies and rival parties or groups competed for forming the Government, had arisen in India pretty frequently. In such cases, some Governors had asked the claimants to parade before "them" their supporters or exercised subjective judgment as to which party commanded majority in the House. In my view, this procedure is both unseemly and unwise as in the former case, it subjects honourable members of the Legislature to the indignity of a parade and in the latter, subjects the Governor to a charge of bias and partisanship.

On the other hand, calling parties in order of their strength in the House will certainly be the most prudent and non-controversial course of action. Again in 1991, when no party had a majority in the Lok Sabha, the President invited the leader of the then largest single party, the Congress Party and on the acceptance of the responsibility by its leader, appointed him as Prime Minister, a course that is clearly fair to all the parties. In 1996 and thereafter, the country did not return a single party with viable majority and coalition Governments had short-lived existence. Between 1996 and 1998, there were four Governments at the Centre.

I, therefore, suggest that a convention be established by Presidents and Governors to follow the practice of inviting parties according to their strength and allowing the House to decide which party it would support.

Analogous to choosing the Prime Minister is the situation where coalition partners withdraw support to the Government or ruling parties split and rival groups claim the right to form the Ministry. The President or the Governor is urged by the respective parties to decide the relative strength of claimants. Lists containing the same names are sometimes provided by rival claimants and then personal verification by the Head of State is demanded. The Head of State, who goes through these processes, does not enhance the prestige of the high office. Nor are these procedures constitutionally correct.

Under the Constitution, the Prime Minister or the Chief Minister is not required to possess a majority of the membership of the House; they have only to command a majority of members present and voting in the House. If the Head of State insists on support of the majority *of* the membership of the House, he would be palpably wrong. Whether the claimant commands majority *in* the House can be tested only in the House and not in the gardens.

In 1990, when the Bharatiya Janata Party, whose support ensured a majority in the House to V.P. Singh Government, communicated to the President their withdrawal of support to the ruling party, the President did not take note of it. It was for the party which alleged that the Government in office did not command majority in the House to prove the claim. As the House was not in Session, the President asked the Prime Minister to summon the House and take a vote of confidence, to avoid a lame duck Government continuing in office without summoning the House till the date of the statutory requirement under article 85 of the Constitution (as it happened in the case of the Charan Singh Ministry).

Unfortunately as some of the Governors did not follow that precedent, the chance of developing a convention was lost. I am happy that the issue was set at rest by the Supreme Court in *Bommai's case* by approving the floor test in such cases.

Advice of the Council of Ministers

The British convention that the Crown must, in the exercise of its functions, act in accordance with the advice of the Council of Ministers has been embodied in our Constitution in article 74. As Ivor Jennings puts it: "In nearly every case she (Queen) acts on the advice of Ministers". But in exceptional circumstances, the Crown would be justified in refusing to accept such advice. Ivor Jennings mentions that "If Mr. Chamberlain had (as he would not have thought of doing) advised dissolution in May 1940 when Germans were invading Belgium, the King would have been justified in refusing". Thus the British convention is flexible and provides for exceptional and remote possibilities.

The use of the word "shall" in article 74 may cause confusion. If "shall" is interpreted by courts in the absolute sense without exception, situations such as the one cited by Ivor Jennings may cause havoc to the nation. One may argue that such situations may not arise but law must provide for remote and improbable contingencies. In India, the words in article 74 (1) of the Constitution that the President *shall* act in accordance with the advice of the Prime Minister and Council of Ministers, if strictly interpreted, would leave no option to the President but to order dissolution of the House, even in absurd circumstances cited by Ivor Jennings earlier.

Hood Philips, in his book *Constitutional and Administrative Law,*[4] after setting out the two views, concludes that a limited personal prerogative to the Sovereign (to refuse dissolution in appropriate cases) appears to be the better one. He adds that it is more in consonance with the traditions of British Parliamentary Government. According to him the reason for the general convention that the Sovereign is bound by the advice of her Ministers is not applicable if they do not represent the wishes of the electorate (or Commons). Among the factors on which Sovereign could properly refuse dissolution would be whether the question in issue is of great political importance; whether supplies have been voted; whether there is a minority Government; whether there is a war on, etc.[5] But as stated in Halsbury, *Laws of England,*[6] the Sovereign has never refused to dissolve the House for over a hundred years. It is, however, conceivable that if the Prime Minister recommends dissolution of the House in the midst of a war, the Crown may decline. Such contingencies are only remote possibilities. At the same time, the British practice of accepting the advice of the Prime Minister for dissolution of the House rests on the right of the Prime Minister to seek a mandate from the people against the decision of the House. It is not unusual for the House to be out of touch with public opinion and a fresh mandate may be necessary.

In 1991, when Prime Minister Chandra Shekhar resigned without facing a vote of the House on the Motion of Thanks, he sought dissolution of the House. Though technically Chandra Shekhar was not defeated in the House, it was obvious that he did not have the support of the majority. In view of the fluid state of constitutional law on the issue, the President on that occasion relied on an additional factor for ordering dissolution namely, that no political party had staked a claim to form the Government. The President in that case did not decide whether he was bound by the advice of the outgoing Prime Minister.

On the other hand, President Sanjiva Reddy, while dissolving the House in 1979, relied on the advice of the then Prime Minister Charan Singh and it was so stated in the order of dissolution. President Reddy was severely criticized for accepting the advice of Charan Singh who had no mandate either from the people or from the House. It seems the British practice of accepting the advice for dissolution from the Prime Minister whether in office or defeated has stood the test of time.

The President's powers of issuing proclamations of emergency (article 352) or imposing President's rule (article 356) always cause a political storm. It is well established that the President's satisfaction regarding the need for imposition of President's rule in a State is not his personal satisfaction but that of the Union Government's and the legality or propriety of the Government's action is justiciable. Yet the use of the words, "If the President is satisfied" creates in public mind the impression that the President is responsible for the decision.

Normally, the President acts in such cases in accordance with the advice of the Council of Ministers. The Government is answerable for such acts to the Parliament and to the Judiciary. Affected parties, however, often approach the President to withhold his concurrence on some ground or other and the President is criticized for not responding to such requests. As I had mentioned earlier, the President is not an appellate or supervisory authority over the Prime Minister nor should he try to become a second centre of authority in the State. Secondly, if the President delays the acceptance of the advice and in the meanwhile the law and order situation deteriorates, the President is not answerable to the House but the Government will have to face a serious situation.

If, however, the advice of the Government suffers from a constitutional infirmity or is otherwise flawed, the President may return such advice for reconsideration by the Council of Ministers according to the proviso to article 74 (1) of the Constitution.

On 12 March 1991, the last day of the Lok Sabha, the Minister of Parliamentary Affairs introduced a bill for pay, pension and perquisites of members and former members of Parliament. During the consideration of the bill, a Janata Dal member moved an amendment to provide a proportionate amount to every member "who had served for a minimum period of one year", and it was adopted. When the bill came for my assent, I found that the amendment was moved without the recommendation of the President as required by article 117(1) of the Constitution which specifically provides that a bill or amendment to a

Money Bill *shall not be introduced or moved* except on the recommendation of the President. As the amendment was moved without such recommendation, the President said that he did not propose to give assent to the bill.

Recently, President Shri K.R. Narayanan returned for reconsideration under the proviso to article 74(1), the Proclamation seeking to introduce President's rule in Bihar. He had given elaborate reasons for his decision. The Union Government wisely refrained from reaffirming its recommendation under the proviso to article 74(1) and ensured the smooth working of the Constitution. I am sure that healthy conventions will develop in course of time regarding the exercise of President's powers under articles 352 and 356.

It is sometimes argued that in conformity with his oath of office to "preserve, protect and defend the Constitution and the law", the President should intervene to prevent abuse of authority. This plea will have validity when the advice of the Prime Minister is contrary to the Constitution or norms of democracy enshrined in the Preamble to the Constitution. Administrative responsibilities must rest with the Prime Minister and the Council of Ministers.

The British convention that the Prime Minister shall communicate to the Crown all important matters relating to the administration and furnish information sought by the Crown, has been enacted as article 78 of the Indian Constitution. Even today, the Prime Minister of England meets the Crown every week and communicates matters concerning the governance of the nation. The same system prevails in India also. The Prime Minister meets the President and freely discusses the matters relating to administration. The extent of the dialogue naturally depends on the personal equation between the two dignitaries.

Article 78 (b) provides that *it shall be the duty* of the Prime Minister, to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for.

The use of the word *shall* as in the case of use of the word *shall* in article 74(1) may cause difficulties. Can the President call for prior information regarding budget proposals (apart from seeking recommendation of the President under article 117(1) of the Constitution) or information of a high security or confidential matter? No Constitution is perfect nor can any Constitution anticipate all the problems that may arise in future. Such issues have to be solved by forging healthy conventions.

The British conventions regarding the functions of the Crown have been set out by Bagehot as follows: the Crown has "the right to be consulted, the right to warn and the right to encourage". The President of India must be presumed to have the same rights as our system is modelled on the British form of Cabinet Government. Delicate questions whether the President could exercise these rights in public or in the private meetings with the Prime Minister may arise and will have to be tackled with wisdom and foresight.

Another grey area that has arisen in the past and may have to be regulated by convention, is the binding nature of the advice of a Council of Ministers which, after resignation, carries on the administration till alternative arrangements are made. The Constitution makes no mention of interim or caretaker Government. The letter of the law would seem to suggest that such Council of Ministers have the same rights and privileges as the normal Cabinet. But then, a Ministry that has forfeited the confidence of the House and lost its mandate to govern cannot be equated with the Ministry enjoying the confidence of the House.

In such a case, the President has to ensure that a Ministry functioning till alternative arrangements are made does not commit the future elected Government to policy decisions or to heavy financial burdens. In 1992, when the Chandra Shekhar Government was continuing in office after resignation, the President advised the Prime Minister against certain proposals that would commit the future Government to heavy financial liabilities. The Prime Minister accepted the advice, thereby setting a healthy convention.

Conclusion

The foregoing analysis leads to the conclusion that the President of India under the Constitution and practices built up during the last 50 years has the same status and functions as the Crown of England, no more and no less. If some people want to vest more powers in the office of the President, it must be done after getting a mandate from the people through their election manifesto and by constitutional means and not by a wayward interpretation of the existing basic law.

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[1] Hyde, Montgomery, *Baldwin: The Unexpected Prime Minister*, p.197

[2] *Ibid*, p.199; also *see*, Hood, Philips, *Constitutional and Administrative Law* (7th Edn.), p.320

[3] Venkataraman R., *My Presidential Years*, p.275

[4] Hood, *op. cit.* (7th Edn.), p.155

[5] Wade & Philips, 1970; p.84, 120; *see* also De Smith, 1973, p.104, 106. Hood Philips, 1978, p. 148, 149

6. Halsbury, *Laws of England* (4th Edn.), Vol. 8, para 938

THE OFFICE OF THE PRESIDENT

Fali S. Nariman

Introduction

The constitutional position of India's President is similar to that of England's Sovereign, described in elegant prose more than a hundred and fifty years ago by a great political journalist of his time:

> To state the matter shortly, the Sovereign has, under a constitutional monarchy, three rights—*the right to be consulted, the right to encourage, and the right to warn.* And a king of great sense and sagacity would want no others. He would find that his having no other would enable him to use these with singular effect. He would say to his (First) Minister: 'The responsibility of these measures is upon you. Whatever you think best must be done. Whatever you think best shall have my full and effectual support. But you will observe that for this reason and that reason what you propose to do is bad; for this reason and that reason what you do not propose is better. I do not oppose, it is my duty not to oppose; but observe what I warn'. Supposing the king to be right, and to have what kings often have, the gift of effectual expression, he could not help owing his Ministers. *He might not always turn his course, but he would always trouble his mind.*[1]

India's first President tried very hard to influence India's first Prime Minister, but did not succeed either to "turn his course", or "trouble his mind"! He had complained about this to Minoo Masani: he told Masani that Panditji did not allow him to exercise the powers which he thought he had under the Constitution. Years later, Masani shrewdly observed that Rajendra Babu did not have the force of Nehru's personality, gave in too readily, and yet went on grumbling (as he gave in) saying: "this is not the way we framed the Constitution." Masani also said: "when people say what is wrong with this Constitution, I say nothing is wrong, what is wrong is us, we have destroyed the Constitution because people in Delhi love power too much to tolerate either a strong President or a strong State."!

Minoo Masani was a member of India's Constituent Assembly of which Dr. Rajendra Prasad was President, but his views about a "strong President" do not find support in the Constitution they together helped to frame. At the same time, the Constitution of 1950 did not envisage a mere cipher or figure-head as President.

Constitutional Provisions

The office of India's Head of State is an elected one. The Constitution of India of 1950 provided (in article 74) that "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions". That is all. Like the Monarch in England, the President of India was expected to act not on his own but on the advice of his Council of Ministers—since they alone were collectively responsible to the Lok Sabha, its members being directly elected by the people. The rest was wisely left to convention and constitutional practice.

But we never know when to count our blessings. During the emergency imposed from 25 June 1975, when many members of Parliament belonging to Opposition parties were placed under detention, the Government of the day rushed through Parliament the Constitution (Forty-second) Amendment Act, 1976. One of its provisions substituted a new clause for article 74(1). It read: "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice."

What was previously left to constitutional convention was incorporated as a mandate in the written text. Those who drafted this provision did not harken to the warning of Walter Bagehot—that same wise chronicler of a bygone age—who had written that when "you have a select committee on the Head of State, its charm is gone; its mystery is its life; we must not let in daylight upon magic."[2]

Certain features of constitutional law are best left to conventions, which grow with time and practice. But after the 1976 amendment, the role of the President was confined to that of a titular functionary; he had no "elbow-room", he had to act according to the wishes of his Ministers. When the Janata Government came to power after the March, 1977 Elections, they moved a Constitutional amendment in 1978, adding a proviso to the substituted provision that had been introduced in 1976. It read: "Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration".

Since 1978, the President has, on some occasions, in fact required his Council of Ministers to reconsider advice tendered to him, to the enduring benefit of the public weal. In March 1996, for instance, President Shanker Dayal Sharma returned the Representation of the People Ordinance, 1996 (aimed at shortening the period of the poll campaign from three weeks to two weeks) and the Constitution (Scheduled Caste) Amendment Ordinance, 1996 (intended to extend reservations to a large number of Dalit Christians) on the ground that promulgation of such Ordinances on the eve of elections would not pass the test of "constitutional propriety". The decision was hailed by all Opposition parties as a step that would strengthen parliamentary democracy[3]. The Government wisely acquiesced to the President's view.

Meaningful Role of the President

I am one who believes that the President of today (and of tomorrow) can, and must, play a more meaningful role in the governance of this great country. The times urgently demand it, and the Constitution does not (within limits) prohibit it. Let me define these limits.

I believe that the President provides the window (perhaps the only window or opening) in that wall of separation that divides those in governance from the rest of the populace. Even after the Constitutional Amendment obliging him to act in accordance with the reconsidered advice given by his Council of Ministers, there is no prescription as to the time when he should so act. Time runs in the President's favour; and the astute President Giani Zail Singh used this to great advantage. When the Indian Post Office Amendment Bill, 1986 was submitted to him for assent, there was much criticism of its provisions, particularly the one which permitted an interception of all communications through the mail by the Government of the day. Although the Bill was passed by both Houses, Gianiji paused. He did not assent and reportedly stated before demitting office that he hoped that his successor would not clear it![4] As a consequence, the public outcry against the Bill gathered greater momentum, and the Bill lay unsigned on President Venkataraman's desk who, having expressed his own displeasure at the Bill, returned it to the Rajya Sabha. The Bill was tabled again in the Rajya Sabha on 12 March 1990, where it still remains, a pending Bill![5]

All of which illustrates how a Head of State can successfully 'choke-off' unpopular legislation by just doing nothing—by a calculated process of deliberate inaction, an unpopular and regressive measure can be successfully prevented from becoming enacted law![6] No one suggested that Gianiji had defied Parliament, no one moved for his impeachment, the obvious reason of course was that the President had the firm backing of public opinion.

The British Practice

The British Constitution is not written. But it recognises that the Monarch on rare but important occasions is entitled to intervene in public affairs in a way that may be decisive. The historical material now becoming available in the post-War period in England shows how effective were the interventions of Britain's constitutional Monarchs in public affairs. Some of the recently de-classified Cabinet Papers in the United Kingdom bear testimony to the vast political influence exercised by King George VI and by his daughter Queen Elizabeth II.

The President of India, as its First Citizen, has the constitutional right, and correspondingly the duty, to interpose in public affairs of great moment, giving of his wisdom—privately, never publicly; quietly, never with fanfare. An elected President notionally represents the collective will of the people and he can use it and must use it to temper the occasional excesses of its elected representatives. In October 1997, the incumbent President of India returned the unanimous recommendation of his Ministers that President's Rule should be imposed in the State of Uttar Pradesh, requesting the Cabinet to reconsider its recommendation. It was reconsidered and the Government headed by Shri I.K. Gujral, decided not to press its prior recommendation, respecting the views of the Head of State.

I believe that on those very rare occasions, when Parliament or the Government chooses to do something which the President of India believes to be unconstitutional or even morally wrong or improper, it is his function, right and duty to intervene and to make known his views. An illustrative instant in point would be an excessive prolongation (by a proposed constitutional amendment) of the life of an existing Parliament which would keep in office a Government whose normal term has run out, and which is anxious to avoid elections. But, then how must a President as a constitutional Head of State, do this? Many years ago, a former Chief Justice of Pakistan provided the answer. He was asked by his country's President (during that country's initial experiment with democracy) whether he could constitutionally refuse to give his assent to a Bill passed by the National Assembly (Pakistan's first Constitution after Independence was like ours—fashioned on the Westminster model). Chief Justice Munir's answer went something like this: If you think it is a matter of the gravest importance, and you cannot in all conscience accept the measure presented to you, you can, and you must (if you are true to your oath) refuse assent—but having refused assent you must then resign; the system must go on; people will know why you resigned, and will sort things out with their Government.

Pearly words of wisdom: they show how important, and how potentially effective, is the great office of the President in a parliamentary democracy.

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[1] Bagehot, Walter, *The English Constitution*, Fontana Press, 1991, p.113.

[2] *Ibid*, p.102

[3] "The President sends back Ordinances: Constitutional Propriety in Question". *The Times of India*, New Delhi, 20 March 1996.

[4] *Memoirs of Giani Zail Singh: The Seventh President of India*, Har-Anand Publications Pvt. Ltd., New Delhi, 1997, p.279.

[5] Austin, Granville, *Working a Democratic Constitution*, Oxford University Press, 1999, pp. 513-14.

[6] As Walter Bagehot said: "Probably in most cases the greatest wisdom of a constitutional King would show itself in *well-considered inaction*", p.110.

SPEAKERSHIP IN A MULTI-PARTY SYSTEM

N.S. Pharande

In parliamentary democracy, the Office of the Speaker is held in high esteem. He regulates the deliberations of the House and interprets the Rules of Procedure in the conduct of its business. Through his fair-mindedness, impartiality and judicious exercise of his power of recognition of parties and groups in Parliament, the Speaker can build up the best traditions of parliamentary democracy. Writing about the significance of the Speaker's position in parliamentary democracy, the first Speaker of Lok Sabha, Shri G.V. Mavalankar remarked:

> In parliamentary democracy, the Office of the Speaker is held in very high esteem and respect. There are many reasons for this. Some of them are purely historical and some are inherent in the concept of parliamentary democracy. Once a person is elected as Speaker, he is expected to be above parties, above politics. In other words, he belongs to all the members and belongs to none. He holds the scales of justice, irrespective of party or person, though no one expects that he will do absolute justice in all matters; because, as a human being he has human drawbacks and shortcomings. However, everybody knows that he will intentionally do no injustice or show partiality; such a person is naturally held in respect by all.

In the words of Pandit Jawaharlal Nehru: "The Speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation's freedom and liberty. Therefore, it is right that, that should be an honoured position, a free position and should always be occupied by men of outstanding ability and impartiality."

In the early years, the Indian Speakers have had to look to and be guided by the shinning example of the English Speaker. The Office of the Speaker is a unique institution developed over a period of 700 years in the British parliamentary system. The British convention "once a Speaker, always a Speaker" has not been established in India. The Office of the Speaker has not yet been taken out of the vortex of party politics. Even if a Speaker is returned to the House as a member, his nomination to this

Office depends upon the sweet will of the party enjoying majority in the House. For stabilising democracy in our country, it is high time that we followed the sound parliamentary conventions associated with the British Speakership. The obvious reason for the re-election of the Speaker is the fact that the British Speaker maintains his neutrality after elevation to the Chair and virtually takes exile from the politics of the country. The failure of the political parties to take any initiative in setting up these precedents can partly be attributed to the general apathy of the public and the Press. The position thus remains fluid and the Office of the Speaker remains a matter of patronage by the ruling party.

Another special feature of the Speaker's position is that, after election, he dissociates himself from the party to which he belongs. He does not attend any party meeting, but is available in his Chamber to all at all times. He listens to their grievances and to their suggestions and gives necessary directions. All Ministers and members have to approach the Speaker in his Chamber by previous appointment. His decisions cannot be criticised in the House or outside. He must be referred to with respect and held in high esteem in order to preserve and maintain the dignity of the House.

The Office of the Speaker is almost as old as Parliament itself having its own authority, prestige and dignity. It is the soul of Parliament/ Legislature. Independence and impartiality are the most important attributes of the Office of the Speaker. His authority inside the House is supreme and is based on his absolute and unvarying impartiality. Shri G.V. Mavalankar once declared: "It would be my duty and effort to deal with all members and sections of the House with justice and equity, and it would be my duty to be impartial and remain above all considerations of party or political career."

The Office of the Speaker occupies a pivotal position in our parliamentary democracy. The person elected to this exalted Office should be fully familiar with parliamentary practices and procedures and rules of the House. He should be sharp and tactful and always guided by the sense of the House. In 1968, the Committee of Presiding Officers headed by Shri V.S. Page, the then Chairman of Maharasthra Legislative Council, in its report had stated:

> The principal duty of the Speaker is to regulate the proceedings of the House and to enable it to deliberate on and decide the various matters coming before it. Thus, in considering the various notices or points raised before him... the Speaker should always bear this in mind and where in doubt, he should act

> in favour of giving an opportunity to the House to express itself. The Speaker should not so conceive his duties or interpret his powers, as to act independent of the House, or to override its authority or to nullify its decisions. The Speaker is a part of the House, drawing his powers from the House, for the better functioning of the House, and in the ultimate analysis, a servant of the House, not its master.

In order to do justice to all sections of the House, the Speaker must be well acquainted with the members of the House and should know the special interests and viewpoints of each member. No Speaker can discharge his duties successfully unless the members co-operate with him and try to uphold his dignity and respect the ruling given by him. A successful Speaker has to be very shrewd, tactful and skilful in developing personal contacts with the members. The Speaker is the custodian, protector and defender of the privileges of the members of the House inside and outside it. He is the final interpreter of the Constitution and the rules so far as matters in or relating to the House are concerned and no one, including the Government, can enter into any kind of argument or controversy with the Speaker over such interpretation.

The Speaker is put to test many a time in the House, particularly when the atmosphere is fully surcharged. At such moments, he has to hold the perfect balance between different sections and groups in the House and adhere to the tenets of justice, equality and fairplay. He has to apply a lot of skill, tact and persuasion. In such a situation, humour plays a very important role. A former Speaker of the House of Commons once said that the basic quality for a Speaker, besides his knowledge of parliamentary affairs and procedure, was wit and humour because when you have nothing in the rules and procedure, humour and wit come to the rescue. This is a gift which may be either natural or cultivated but it is certainly a weapon of great potency with a Speaker.

Over the years, the role of the Speakers has undergone a sea change. Earlier, the Opposition was very small in number compared to the ruling party. Now, the complexion has changed altogether. In the absence of a clear majority for the Treasury Benches, the Opposition takes every opportunity to put the Government on the mat. Opposition parties have now become more vocal. Moreover, with the advent of information technology, members today demand immediate information in respect of their questions and also demand immediate solutions to the problems of the people. That is why we are frequently witnessing noisy and unseemly scenes which lead to abrupt curtailment of the working days. This has made the role of the Speaker much more complex and difficult than it ever was.

Today, in our country, multi-party Government or Coalition Government has become very common. In the near future, no single major party is in a likely position to secure a clear mandate. So, mostly, Indian politics may be dominated by multi-party system of Government. The mindset and ethos of people in general are presently in favour of multi-party system due to various reasons, such as, inadequacy and lacunae in the electoral system, division of the electorate into various caste, creeds, etc. and low percentage of voting, with the result that the Parliament or the Legislature will be represented by so many diverse interests. In such a situation, the role of the Speaker becomes rather difficult because the Speaker is the only person who is the custodian of the rights and privileges of the members. He has to be very vigilant and committed to safeguard the interests of various sections in Parliament and the Legislatures. He cannot ignore the different ideologies represented by the legislators and parliamentarians in the House while discharging his functions. Our Speakers are expected to be always impartial and duty-bound to give opportunities to all sections.

Ours is a geographically vast and demographically big society which is pluralistic. The structure of our Constitution is undoubtedly federal which contemplates a strong Union among effectively functioning States. Therefore, the only way to run such a gigantic democracy is to ensure effective decentralisation of powers among States with central power in the hands of the Union Government. The 73rd and 74th Constitutional Amendments have given legal shape to this concept. The Sarkaria Commission was appointed to go into the question of Union-State relations and it had made important recommendations which are under the active consideration of the Central Government. Now, the Constitution review committee is considering various important constitutional issues that are facing the country.

In the multi-party system, due to various reasons, political defection is bound to happen. The evil of political defection has been a matter of national concern. If it is not combated, it will undermine the very foundation of our democracy and the principles which sustain it. With this object in view, the Fifty-second Constitutional Amendment Act was enacted and the Tenth Schedule to the Constitution was added. This law is popularly known as the Anti-Defection Law. In this enactment, the role of the Speaker is very crucial and he has to act as a quasi-judicial authority. What is important is that in a multi-party system the responsibility of the Speaker, particularly in anti-defection matters, is very crucial and has a bearing on the whole process. The Speaker is the sole authority who will determine the disqualification issue under the said law and in this law, the Speaker will exercise powers and discharge functions as a Tribunal adjudicating rights and obligations under the Tenth Schedule. While discharging this function, the Speaker has to follow high traditions of the great Office.

Of late, a clear trend is discernible where the sweeping emergence of regional political parties has sustained at the expenses of age-old national parties. At times, local and provincial elements get priority over national and important issues. For that, we should cut across party lines and develop consensus on issues concerning socio-economic problems such as population control, education, employment, health, etc. These are the areas where groups/parties should endeavour to see that the nation is kept above party consideration.

In this background, the role of the Speaker in a multi-party system is very important and tricky. As stated earlier, the Speaker has to discharge his duties with maximum amount of fair mindedness, impartiality and equanimity. If we look at the political scenario, not only in our country but also in some other democracies, we can find that the element of pluralistic politics and consequent Coalition Government have come to stay and, therefore, the responsibility enjoined upon the Speaker has become more and more important and onerous. But the track record of the last fifty eventful years has proved beyond doubt that by and large our Speakers/Chairmen have stood the test of time and discharged their duties keeping in mind the high traditions, conventions and customs.

CHALLENGES BEFORE THE PRESIDING OFFICER

E.D. Marak

The office of the Speaker commands great respect and is held in high esteem in a parliamentary democracy. It is, therefore, generally expected that the decisions taken by him/her should be as far as possible beyond any doubt or public criticism.

Speakership and Anti-Defection Law

The role of the Speaker has become very crucial, especially after the enactment of the Anti-Defection Law in 1985. Under the Tenth Schedule of the Constitution, all cases of disqualification of members on grounds of defection or split in a party have to be decided by the Speaker. With the enactment of the Anti-Defection Law the powers of the Speaker have been greatly enhanced but they also place a heavy responsibility on the Speaker. This law has been discussed at various fora and remains extremely controversial, ill-defined and amenable to varying interpretations.

In a small State like Meghalaya where the total membership of the House is only 60, change of party affiliations by members and split or merger of political parties is very common. There are many parties in the State and the election results are not decisive for any political party to be able to form a Government on its own. As a result, the State has, most of the time, witnessed shifting of loyalties by the members or split of the parties. In such a scenario, the decision of the Speaker is very crucial. We have seen that the provision of making the Speaker the sole judge in the matter of disqualification of a member or split of parties and debarring the courts from reviewing his decision has been marked with controversy. Even if the Speaker decides in a judicious and impartial manner, his decision is most of the time viewed with suspicion by the aggrieved party because of his political affiliation. Therefore, it is necessary to keep the Office of the Speaker away from any suspicion or criticism.

The friction between the Speaker and the courts on anti-defection cases is indeed very unfortunate. We have seen that the decisions of the Speakers are challenged in the courts and at times reversed by the courts. This is not a healthy position in a parliamentary democracy. We have to consider the privileges of the Legislature in this context. I feel that this controversy can be resolved by retaining clause 7 in the Tenth Schedule which debars the decision of the Speaker from judicial review, by following proper procedure of ratification of the Act by the State Legislatures as per the provisions of article 368(2) of the Constitution.

Another area of concern for the Speaker is the responsibility for maintaining discipline and decorum in the House. The growing tendency of members to disturb and stall the proceedings of the House has eroded the credibility of the Legislatures. The Resolution adopted at the All India Conference of Presiding Officers, Chief Ministers, Ministers of Parliamentary Affairs, Leaders and Whips of Parties on "Discipline and Decorum in Parliament and Legislatures of States and Union territories" held in New Delhi on 25 November 2001 is a step in the right direction. If the relevant recommendations of the Resolution are incorporated in the Rules of Procedure of the Legislatures, I am hopeful that this unhealthy trend can be checked to a certain extent which, in turn, will facilitate orderly conduct of the business of the House, thereby making the task of the Presiding Officer a little easier.

SPEAKER AND COALITION GOVERNANCE

Bal Ram Jakhar

Pandit Jawaharlal Nehru described the position of the Speaker thus: "The position of the Speaker is not an individual's position or an honour done to an individual. The Speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation, in a peculiar way, the Speaker becomes the symbol of nation's freedom and liberty." As a necessary corollary, the Speaker being the custodian of the House, has the most arduous duty and responsibility to preserve, protect and promote the dignity of the House. It implies that he conducts the business of the House in such manner that he is respected and honoured by all the political parties and individual members of the House. He, thus, becomes a person not belonging to any political party—rather, he belongs to all parties. In other words, political neutrality is his fundamental requirement, without which he cannot manage and run the House proceedings in an orderly manner. It is not enough that he functions judiciously and without favour or disfavour, but he must also convince the House that he is impartial in taking decisions and giving rulings. In the House, he is the supreme authority. As the conscience-keeper of the House, his efforts should be to evolve consensus on controversial issues as far as possible.

There was a time when the Lok Sabha used to have one party majority, simple or absolute. Most of members in the House used to be seasoned politicians with value-orientation and self-discipline. Slogan raising in the well of the House was an exception. Members obeyed the Speaker's advice and directions. The Speaker's task was not so challenging and difficult as it is today.

Over the years, the complexion and composition of the Lok Sabha has drastically changed. There is no single party majority in the House; there is a coalition of several parties that form the majority group in the House and forms the Government. The Twelfth Lok Sabha had a group of thirteen parties, whereas the Thirteenth Lok Sabha has about two dozen parties forming the majority group, which has formed the Government at the Centre. Every party, whether sharing power in the Coalition Government or in the Opposition, has its own agenda. There are no set rules, nor can they be framed as to how the Speaker should manage a 'hung' House. He has to decide according to the situation as and when it arises in the House. He has to be tactful, but firm, bold and courageous and must exercise his authority with prudence and wisdom to preserve the grace and dignity of the House.

The new members of the House do not have the requisite understanding of the parliamentary system; they are unaware of the conventions and rules of the House. They should adapt themselves to the needs of the House and learn to conduct themselves in the right manner. Many times, members are taken over by excitement, impulse and emotions. It is more true of those who directly become members of the House without the experience of State Assemblies.

Of late, the House witnesses noisy and ugly scenes practically every day on one issue or the other. The House is adjourned for the day and even for days together and is not allowed to function. The Opposition takes it as its victory, unmindful of how much it costs in monetary terms to the nation. The Speaker's orders and advice are not heeded to by the members thereby making the management of the House more difficult and challenging. By no logic and argument can this be appreciated and approved, as it seriously affects democratic tenets.

Every member has a right to express his opinion and views and raise issues and matters, but that right must be exercised in a manner that the decorum and dignity of the House and position of the Speaker is maintained and in no way they are allowed to be jeopardised. It is the bounden duty of every party to ensure that under no condition, the democratic system is disrupted. Now, with the proceedings of the House being telecast live, the entire country views how the highest and supreme institution of democracy operates and how peoples' representatives function in the Parliament. That is all the more reason why our parliamentarians and legislators should conduct themselves in a dignified manner so that the dignity of the House is not undermined in any manner.

SPEAKERSHIP IN A COALITION POLITY

Arun Gujarathi

The framers of the Constitution consciously and rightly adopted the British model of parliamentary democracy with a Cabinet system of Government, which embodies the concept of collective responsibility, as best suited to the genius of India. They had deep faith in this system because they felt it is the best suited to India. However, it is significant to point out that on all occasions in the last century when the General Election failed to produce a single party majority in England, the outcome has been single party minority Government and never a coalition. It was so, because a coalition is an alliance between two or more hitherto separate or even hostile groups or parties in order to carry on the Government and share the principal offices of the State. Not frequently, coalitions in Europe have been arrangements for postponement of an unwanted election. In India, in 1967 in certain States Coalition Governments were formed; after emergency, the Janata Government came to power in the year 1977, which was a Coalition Government wherein four major political parties shared power by merging the four parties into one new Janata Party. However, during the regime of Shri V.P. Singh, an era of Coalition Government at the Centre started in India in the real sense. The National Front Government at the Centre and various State Governments were formed as no single party could command majority in the House of the People/ Legislative Assembly.

The concept of federalism is accepted by us as a guiding feature. It is a basic feature of our Constitution. The Constitution of India is basically a federal Constitution and the essence of federalism is the equality of treatment to provincial Governments by the Union Government. It can be said that the era of Coalition Governments strengthens our federal system where State parties have ample say in shaping the policies of our country.

Generally speaking, the term "Coalition Government" means a combination of a number of parties which on their own are not in a position to form the Government but join hands for the purpose of running a Government. In such a system, splinter groups come together on a common platform forgetting their broad differences and thereby form a workable majority in the House. The first casualty of a coalition is the principle of collective responsibility. The Cabinet at times tend to speak in many voices. The sense of direction and unity of purpose which are very essential for the proper functioning of a Cabinet often get lost in a Coalition Government.

The transition from an era of one party dominance to one of coalition politics is often seen as a shift in the locus of power away from the Centre and towards the States. Our coalition experiment is the product of diversity and our heterogeneous character as it reflects the functioning of the competitive multi-party system in India. The intriguing phenomenon of Indian politics is that the electoral behaviour has been baffling in recent years. This signals an erosion of one party dominance and the emergence of multi-party system. Both minority and Coalition Governments are inevitable in our country today. The change has caused 'political instability', despite growing political awareness among the voters. Why is it that Coalition Governments have tended to be short-lived? When hung Legislatures are returned, political parties are not prepared to face fresh elections immediately. The success of a coalition, to a significant extent, will be dependent on the man who leads it. All the partners of the coalition should get to feel that they are partners in the meaningful sustenance of the Government rather than warring sharers of the spoils of office.

In this background, the role of the Speaker assumes enormous importance. It becomes difficult for the Speaker to run the business smoothly and to accommodate the competing claims of different coalition partners, so as to ensure effective management of the time of the House. Often local issues within the purview of the jurisdiction of the States tend to get raised in the House proceedings much against the Rules of Procedure, bringing the Speaker under avoidable strain. Under such circumstances, the Speaker has to use his good offices very often and handle the floor management issues carefully and skilfully. The Speaker has to play the role of a mediator, and pacify the agitating Opposition as well as the coalition partners. He has to act like a counsellor and management expert, and always balance the tricky situation without appearing partial in his efforts and acts. In a coalition arrangement, the most hot seat of power, after the Prime Minister is that of the Speaker and only a person of proven wisdom, having soft and suave manners, and ability to find out a via media in any situation, can emerge as an effective Presiding Officer. His decisions can either sustain or upset the precarious balance in parliamentary democracy. Governance through coalition does have implications for the conduct of business in the Parliament/Legislature and for the Office of the Speaker. Where Ministers representing different political parties in the Government are not able to harmonise their interests and concerns, it detracts from cohesiveness in governance and the Speaker will have to remind the Government of the need for conformity with the principle of collective responsibility.

In coalition governance, legislative matters often get delayed and therefore the number of ordinances promulgated over the recent years are on the higher side. Similarly, the situation in a bicameral Legislature is quite a unique one. In the Maharashtra Legislative Council, till recently the Opposition had enjoyed marginal majority; even that marginal majority sometimes made the passing of a legislation quite a difficult process.

The most important function of the Parliamentary Affairs Ministers is to look after the floor management in the House on behalf of the Government. But due to the internal differences among coalition partners, they often sought the intervention of the Speaker in this regard. It is not desirable that the floor management functions—even of minor varieties and subtle forms—are shifted to the Speaker.

The last few General Elections have yielded only hung Parliaments and minority Governments followed by Coalition Governments. Fragmented and fractured electoral verdicts are differently interpreted by different players in the political game. Governance in circumstances of hung Parliament is, indeed, a very sensitive and complex matter. The practice of coalition politics in India has no doubt projected several weaknesses. Politics is always dynamic. We need not run away from governance through coalitions. Coalitions last only as long as parties comprising them believe that the survival of the coalition is more important than uninhibited pursuit of their party interests. Coalitions are the order of the day in many true democracies. In India, we had fairly significant experience in governance through coalitions. In Maharashtra, we have seen a full term successful running of a Coalition Government from 1995 to 1999 and thereafter, another successful Coalition Government is running till today. Successive Speakers have played a very important role during this period.

THE OFFICE OF THE GOVERNOR

Suraj Bhan

Introduction

The word 'Governor' is derived from the verb 'govern'. According to *Chambers Dictionary* the word 'govern' means "to control and direct the affairs of (a Country, State or Organisation), guide or influence, to control or restrain". The constitutional evolution of the gubernatorial office in India dates back to the coming of Britishers in India. In the East India Company, the management vested in the hands of Governor and twenty-four members who were authorised to organise and send trading expeditions to "East Indies". Gradually, the concept of 'Governor in Council' and 'Governor General in Council' came into being during the British regime. By the Government of India Act, 1935, the Executive powers of the Provinces were vested with the Governor. The Executive of the provincial Government consisted of Governor and Council of Ministers. He was to act as the agent of the King.

Discussion in the Constituent Assembly

In 1947, the Constituent Assembly discussed various options for the appointment of the Governor. The initial view was that Governor should be directly appointed by the people on a system of adult franchise. Another view was that he should be appointed by indirect election. The third view was that the Governor should be nominated by the Central Government in order to function as a liaison between the Centre and the State Governments. The Constitution makers had a vision of a federal India with the States being autonomous and linked together through the Central Government which was to have powers only in certain fields like defence, external affairs, etc. However, with the sad experience of partition days, various fissiparous tendencies, assassination of Mahatma Gandhi, etc., the general consensus came to veer around a strong Centre and instead of 'federal', finally the country became a Sovereign Democratic Republic and Union of States. Shri Brajeshwar Prasad moved an amendment in the Constituent Assembly that "the Governor of the State shall be appointed by the President by warrant under his hand and seal and in the interest of all India unity, and with a view to encouraging centripetal tendencies, it is necessary that the authority of the Government of India should be maintained intact over the Provinces."

Shri H.V. Kamath, Sardar Hukam Singh and Shri Alladi Krishnaswami Ayyar supported the amendment. It was considered that in case Governor is elected by the people there will be likelihood of conflict between the Governor and the Chief Minister and it will be against the basic principle of the Cabinet Government which was to be established in the Provinces. Doubts were also expressed that the elected Governor may join hands with the Chief Minister of the Province to defy the Centre in order to disintegrate the country for their interest. Dr. P.S. Deshmukh expressed the view that when the Constitution is being framed on the pattern of the Government of India Act, 1935 having a responsible Government, there was to be a figure head and not a person who was to interfere with day-to-day functions. Shri B.G. Kher said that the guiding principle of a good Government is that no member of the Executive functionaries should ever be appointed by popular election—neither by the votes of the people themselves, nor by those of their representatives.

Prime Minister, Pandit Jawaharlal Nehru said: "Now, one of the things that we have been aiming at a great deal has been to avoid any separatist tendencies, creation of groups, etc. I feel that if we have an elected Governor that would to some extent encourage separatist tendencies; more than otherwise, there will be far fewer common links with the Centre..." Thus, under the new constitutional scheme, the Governor is a formal constitutional head who, in discharge of his functions, is required to follow the advice of the Cabinet.

Pandit Jawaharlal Nehru also said in his speech: "I think, it would be definitely better if the Governor was not connected with the local politics of the Province, with the factions in the Province. Obviously, a figure that is acceptable to the Province... Our idea is that the Governor will be appointed in the first place on the advice of the Prime Minister, who, in turn, will consult the Chief Minister concerned..."

Under the present system of Cabinet form of the Government, as embodied in our Constitution, the Governor is constitutional and formal Head of the State. He is the Chief Executive of the State and the Executive powers of the State vest in him. He exercises all the powers and functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers save in spheres where he is required to exercise his functions in his discretion.

Although the Governor of a State is appointed by the President of India on the advice of the Prime Minister and his Cabinet, he is not a servant of the Central Government. The Supreme Court, in the case *Hargovind v. Raghukul Tilak,* (AIR 1979 SC 1109) has held: "It is impossible to hold that the Governor is under the control of the Government of India. He is not amenable to the directions of the Government of India nor is he accountable to them for the manner in which he carries out his functions and duties. His is an independent constitutional office which is not subject to the control of the Government of India."

The role of the Governor is summarised in the Governor's oath of office which requires him to faithfully carry out his functions, to devote himself to the service and well being of the people of the State and to preserve, protect and defend the Constitution and the law to the best of his ability.

As regards the position of the Governor, Dr. B.R. Ambedkar made it clear in the Constituent Assembly on 2 June 1949, when he said:

> ...although the Governor has no functions, still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Minister. The second duty which the Governor has, and must have, is to advise the Ministry...an alternative and to ask for a reconsideration. I do not think that anybody in this House will question the fact that the Governor should have his duty cast upon him; otherwise, he would be an absolutely unnecessary functionary; no good at all. He is the representative...of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level which may be regarded as good, efficient and honest administration.

Appointment of Governors

Article 153 of the Constitution provides that there shall be a Governor for each State. It also makes provision that the same person can be appointed as Governor for two or more States. He is the Chief Executive of the State(s) and executive powers of the State vest in him. Only an Indian citizen who has completed thirty-five years age can be appointed as a Governor.

The Governor is appointed by the President by warrant under his hand and seal and holds office at the pleasure of the President. Usually the Governor holds office for a period of five years. The President may, however, transfer a Governor from one State to another or he may be re-appointed in that very State. A Governor may continue to hold office until his successor enters upon his office. The Governor shall not be a member of either House of Parliament or of a House of Legislature of any State. If he is such a member, he is deemed to have vacated the seat. He shall not hold any office of profit.

Governor's Discretionary Powers

Article 163(1) states that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except insofar as he is by or under the Constitution required to exercise his functions or any of them in his discretion. Article 163(2) states that if any question arises whether any matter is or is not a matter as respects which the Governor is by or under the Constitution required to act in his discretion, the decision of the Governor shall be final and the validity of his decision is not open to question in a court of law.

The Governor is entitled to use his discretion only in cases of special political situations. In the following important areas, where the Governor, though not specially equipped with discretionary powers, will be in a position to act in his discretion:

- The Appointment of the Chief Minister,
- Dismissal of the Ministry,
- Dissolution of the Legislative Assembly,
- Advising the President for the Proclamation of a state of emergency,
- The right to report to the President on the failure of constitutional machinery in the State, and
- Assent to Bills passed by the Assembly.

Special Provisions Conferring Extra Discretionary Powers

There are several constitutional provisions under which the Governor can act independently of the Council of Ministers, or act in his own discretion irrespective of, or even contrary to, their advice.

- Article 239(2) provides that the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

- A Presidential Order with respect to the State of Maharashtra or Gujarat which may provide for any special responsibility of the Governor for the matters mentioned therein.

- Article 371A(1)(b) states that the Governor of Nagaland shall have special responsibility with respect to law and order in the State for so long as in his opinion internal disturbances occurring in the Naga Hills continue therein or any part thereof and the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken. The Governor shall, in his discretion, make rules providing for the composition of the regional council for the Tuensang District. For specific periods, the Governor shall, in his discretion, arrange for an equitable allocation of certain funds between the Tuensang District and the rest of the State. The final decision on all matters relating to the Tuensang District shall be made by the Governor in his discretion.

- Article 371C makes special provision with respect to the State of Manipur and contemplates a Presidential Order which may provide for special responsibility of the Governor in order to secure proper functioning of the Committee of Legislative Assembly consisting of members from the Hill Areas of the State. The Governor shall annually, or whenever so required by the President, make a report to the President regarding administration of Hill Areas.

- Article 371F makes provisions with respect to the State of Sikkim, and under clause (g), the Governor of Sikkim is entrusted with special responsibility and subject to such directions as the President may, from time to time, deem fit to issue, act in his discretion.

- The Sixth Schedule under articles 244(2) and 275(1) makes provisions as to the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. In the case of any dispute arising regarding the share of royalties to be made over to a District Council in respect of licences or leases for the purpose of extradiction of minerals, the dispute is to be referred to the Governor, and the amount determined by the Governor in his discretion and his decision thereon shall be final.

- Article 356 of the Constitution, which provides for the imposition of President's Rule in a State, contemplates a report from the Governor with regard to the failure of the constitutional machinery. In this situation, it is evident that the Governor acts directly on his judgment. In making a report under article 356, the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers, the reason being that the failure of the constitutional machinery may be because of the conduct of the Council of Ministers.

- Similarly, article 200 indicates another instance where the Governor may act in reserving a bill for the consideration of the President irrespective of any advice from the Council of Ministers. In such matters, the Governor has to discharge his duties to the best of his judgment and pursue such course which is not detrimental to the interest of the State. The Governor has no general power of vetoing legislation passed by the State Legislature. Nonetheless, he can stall the legislative measure by withholding his assent. There is no time limit prescribed by the Constitution within which the Governor should accord his sanction or send the same to the Legislature to reconsider the bill and introduce such amendments as he recommends in his message. However, if the bill is passed by the Legislature with or without amendment, the Governor shall not withhold assent therefrom.

Article 207(1) states that a bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199, *i.e.* Money Bill, shall not be introduced or moved except on the recommendation of the Governor. In 1987, when I was Revenue Minister in Haryana Government, the then Chief Minister, Shri Devi Lal proposed a bill for the grant of interest free loan to the legislators. The bill was referred to the Governor, Shri B.N. Chakravarti. He, however, returned the bill advising the Government to have some reasonable provisions for rate of interest. The bill was subsequently amended and enacted providing for nominal 4 per cent rate of interest on the loans granted to the legislators.

Appointment of Chief Minister : Governor's Role

Article 164(1) empowers the Governor to appoint the Chief Minister and to appoint other Ministers on the advice of the Chief Minister. The Ministers hold office during the pleasure of the Governor. However, like the discretion of the President in the appointment of the Prime Minister, an essential feature of the parliamentary form of Government is that the

Council of Ministers shall be collectively responsible to the State Legislative Assembly. This means that the Leader of the party which commands majority in the Legislative Assembly is eligible for appointment as Chief Minister and the Governor is bound to request him to form the Government. If there is no party commanding a clear majority in the Legislative Assembly, the Governor may exercise his discretion in the appointment of the Chief Minister according to his personal assessment of the situation at that time. In such a situation, the relevant criterion is not the size of a party or a coalition party, but its ability to command the support of the majority in the Legislature.

Oath of Secrecy to Members

Article 164(3) provides that before a Minister enters upon his office, the Governor shall administer to him oath of office and secrecy according to the form set out for the purpose in the Third Schedule. In the State of Bihar, the Chief Minister forwarded a list of Ministers to be appointed and administered the oath of office and secrecy by the Governor. However, the list consisted of an MLA who had criticised the then Governor and, therefore, the Governor refused to administer him the oath. Subsequently, the MLA publicly apologized in the Press for his conduct and later on he was appointed Minister.

Minimum Qualification for MLAs

According to clause (4) of article 164, a Minister who for any period of six consecutive months is not a member of the Legislature of the State, shall, at the expiration of that period, cease to be a Minister. In view of this, a person who is not a legislator can also be appointed as Minister/ Chief Minister in a State for six months. Smt. Rabri Devi, Chief Minister of Bihar, appointed Shri Rakesh Kumar *alias* Samrat Chaudhary as Cabinet Minister on 19 May 1999 when he was not a member of either of the Houses of the Bihar Legislature. He was allocated the Departments of Weights and Measures and Horticulture. The Samata Party complained that the Minister was underage and it was reported in the Press also. Justice Lal, the Chief Justice of Bihar High Court, who was also officiating as the Governor of Bihar, called for detailed report from the Bihar Government within twenty-five days. However, the State Government did not send the report for about three months and in the meantime the Chief Justice retired. I was then Governor of Uttar Pradesh. By Presidential communication, I was given additional charge as Governor of Bihar. Once I took over the additional charge as Governor of Bihar, there was again a news-item about the appointment of the underage Minister with the remarks as to what action the new Governor would be taking in the matter. I asked the State Government for submitting a detailed report within fifteen days. The inquiry was conducted by the Chief Electoral Officer, Bihar and the report was submitted to me on 5 November 1999, which showed that Shri Rakesh Kumar *alias* Samrat Chaudhary had claimed five different dates of birth and according to four records, he was less than twenty-five years, the minimum age required to be an MLA.

I consulted some legal experts; however, their advice was divided. Some were of the view that the Governor is to act only on the advice of the Council of Ministers while others were of the view that the Governor has to uphold the Constitution. I called the Chief Minister, Smt. Rabri Devi. The Chief Minister offered the Minister's resignation but her proposal was not accepted by me. Thereafter, I ordered the dismissal of Shri Rakesh Kumar *alias* Samrat Chaudhary from the Council of Ministers on 16 November 1999. In that order, I also directed for recovery of pay and allowances received by him and for prosecuting him for giving false certificates and making false declarations and also for review of all decisions taken by him during his tenure as Minister. My interpretation of the Constitution was subsequently substantiated by the Supreme Court in the *Jayalalitha case* that a person who is not eligible to become a member of the Legislature cannot be appointed a Minister/Chief Minister in the garb of provisions of article 164(4).

Other Functions, Powers and Privileges

The Governor enjoys legal immunities and is not answerable to any court for the exercise and performance of the powers and duties of office or for any act done or purporting to be done by him in the exercise and performance of these powers and duties. No criminal proceedings can be instituted against him in any court during his tenure as Governor. The courts are also not authorised to summon him to stand trial or arrest him during his term.

Article 167 of the Constitution enables the Governor to keep himself fully informed about the activities of the Government in all spheres. It is laid down that "it shall be the duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers and to furnish to him such information as the Governor may call for". It is the duty of the Chief Minister, if the Governor so requires, to submit for the consideration of the Council of Ministers, any matter on which a decision has been taken by a Minister but which has not been considered by the Council. Article 167 keeps the Governor in close touch with the Chief Minister on matters of importance and policy significance.

The Governor has an important role as an independent and impartial intermediary between the Union Government and the State Government. He is to ensure that healthy, harmonious, and proper relations are maintained between the Centre and the State. In fact, articles 256 and 257 of the Constitution lay down that the Executive powers of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the Executive powers of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. Further, the Executive powers of every State shall be so exercised as not to impede or prejudice the exercise of the Executive power of the Union, and the Executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. It is one of the important functions of the Governor to keep his eyes and ears open and to remain fully abreast of all the activities of the State Government, of the responses and comments in the Press and of the feelings and sentiments expressed in representative public forums in the State. He has to keep the President fully informed and for this purpose the system of a monthly report is prevalent in which the Governor reports all important activities in the State along with his comments for the period of the preceding month.

Under the Fifth Schedule, the Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the Executive power of the Union shall extend to giving of directions to the State as to the administration of the said areas. Further, the Governor may, by public notification, direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

The Governor may make regulations for the peace and good Government of any area in a State which is for the time being a Scheduled Area. He may prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area; regulate the allotment of land to members of the Scheduled Tribes in such area; and regulate the carrying on of business as money-lender by persons who lend money to members of Scheduled Tribes in such area. In making any such regulation, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the Scheduled Areas.

The Governor of a State is also the Chancellor of the Universities set up by the State Government. The functions of a Governor as Chancellor are not a part of his constitutional functions as laid down in the Constitution. His functions as a Chancellor are governed by the enactments of the State Government, which do vary somewhat from State to State. This distinction has to be borne in mind because when the Governor functions under the provisions of the Constitution, he has to act in accordance with the advice of his Council of Ministers except where the Constitution itself provides that he shall act in his discretion, but when he acts in accordance with the enactment of the State, the statutory functions are not governed by this provision of the Constitution. This view has been clearly established by the ruling of the Supreme Court of India.

Article 161 provides powers to the Governor to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the Executive power of the State extends.

Under article 175, the Governor is empowered to address either House of the Legislature or send messages to either House for consideration. These powers, however, have to be used with great care and discretion. The Governor also performs various other important functions such as summoning the House or proroguing the House or dissolving the Legislative Assembly under article 174 of the Constitution.

THE BETTER PART OF DISCRETION—REFLECTIONS ON GUBERNATORIAL DISCRETION

M.M. Jacob

Introduction

Way back in 1957, I had the good fortune of meeting the then President of North Vietnam, Ho Chi Minh, as a member of an Indian Youth Delegation visiting Hanoi. During our conversation, he suddenly popped a question: "Why do you want Governors in India?". At that time and for many years later, the same question was asked by some others in this country. Later developments in the Indian polity have, I think, answered the question adequately. The growth of fissiparous tendencies in some parts of the country, the unwholesome rise of caste and communal politics, erosion in the standards of political morality and various other unwelcome developments have amply demonstrated the wisdom of the founding fathers of the Indian Constitution in creating the office of Governor. No one doubts any more that it is an important and necessary feature of the Indian Constitution and that it performs important functions to protect the Constitution and the unity and integrity of India.

Discretionary Powers

Discretionary powers of the Governor do, however, continue to be debated. Allegations abound that gubernatorial discretion is used or misused at the behest of those in power at the Centre. There have been suggestions that guidelines should be framed to control the exercise of discretion by Governors in order to build up uniformity of approach and healthy conventions. The Sarkaria Commission took the view that the discretionary powers of the Governor were required and that it was neither feasible nor desirable to frame guidelines for the exercise of such powers. However, the controversy refuses to die down.

The country is getting used to fractured electoral verdicts at the Centre as well as in many large States. The causes behind this phenomenon may be one sociologist's delight and another's nightmare. We will not go into them. The fact remains that in the foreseeable future fractured verdicts and, consequently, coalition politics will continue to dominate the scene. In the States, this phenomenon has obvious implications for the role of the Governor. In the exercise of the discretionary powers under article 164 (1) of the Constitution, Governors will be walking on the razor's edge as never before.

Need for Guidelines?

It may be tempting even for the holders of the office to ask for guidelines covering all conceivable contingencies so that the psychological pressures are eased. It is stressful and harassing even for an experienced Governor when he is buffeted on all sides by political parties, the Press, elected representatives, those in power at the Centre and, above all, the pressure of public opinion. Often, decisions are to be made within a reasonable time since delay itself will lead to allegations of bias and partiality. Unfortunately, perceptions differ very widely as to what may be considered reasonable time, so that even a delay of three or four days may be regarded as positive proof of perfidy. How much more comfortable it would be if one were required only to apply some laid-down guidelines mechanically and escape blame for the consequences!

The other view has been that it is impossible to visualise all contingencies in which Governors may be required to exercise their discretionary powers. Even in similar-looking situations, political and other variables may be different. Therefore, it is not possible to lay down guidelines for the exercise of gubernatorial discretion.

Why Guidelines?

I find myself in complete sympathy with either view. I believe that gubernatorial discretion, wisely incorporated in the Constitution, is necessary and desirable. I also believe that guidelines for the exercise of this discretion are an anathema. I do not accept the view that Governors should enjoy their discretion not because it is desirable that they should but because it is not humanly possible to create a strait-jacket for them. I take a more positive view. The discretionary powers of the Governor are necessary because they serve a purpose. They are needed to ensure good Government, stability and high standards of public life. They are also necessary to protect the State and the country against disruptive and fissiparous forces. It is imprudent to frame guidelines to regulate the exercise of these powers because the very concept compromises the dignity of the office of the Governor. Discretionary powers and the need to exercise them properly gives the holder of the office of Governor pride and a sense of achievement. This should not be denied to him by creating a strait-jacket.

Governor's Perception of Discretionary Powers

The exercise of discretion needs courage. To paraphrase the old saying, valour is the better part of discretion. A Governor has to have a complete disregard for personal consequences and absolute courage of conviction while exercising his discretion. The practical realities of power politics are well-known. It is also known that a Governor is only an appointee and may lose his office if his stand in any matter does not find favour with the powers that be. I am not able, however, to accept this as an excuse for pusillanimity. Uncompromising integrity and courage of conviction should be the hallmark of the holder of this dignified office. The aim is to serve public interest and to protect the Constitution. No other consideration should influence the Governor's decisions.

Wide discretion should also be humbling. It is important to recognise the limits of one's powers and respect the bounds of propriety. The late President, Dr. Shanker Dayal Sharma, made the following observations in this connection: "Wise Governors ensure that the limits of their office are never overstepped. Perfect observance of an appropriate degree of restraint is the key to the whole matter. If this is done — the bare minimum expected of a constitutional head — many problems get pre-empted. Some get solved. Others become less difficult to solve. The Governor's ability to be of service increases." There could be no better advice to guide the exercise of their discretion by Governors. Much depends on the Governor's perception of his role. If he is conscious of the dignity of his high office, he will be ever vigilant to ensure that he does not cross the bounds of propriety. While exercising his discretion, he will be aware of the fact that he is only an instrument created by the Constitution to generate public good. His decisions will reflect the will of the people and the basic tenets of the Constitution.

North-East Region : Special Powers of Governors

As the Governor of a tribal State, I cannot regard a discussion of Governor's discretionary powers as complete without mentioning the Fifth and the Sixth Schedules of the Constitution of India. Both Schedules were envisaged as special arrangements to protect and develop the Scheduled Tribes of the country. Under the Fifth Schedule, the Governor has to act, by and large, on the advice of his Council of Ministers. The only discretion he enjoys is to send a report to the President regarding the administration of Scheduled Areas in his State. The Sixth Schedule applies to the States of Assam, Meghalaya, Tripura and Mizoram.

North-East India stands out in many respects. There are more than 200 different tribes, large and small, speaking different languages and dialects. The framers of the Constitution desired to protect the culture, tradition and identity of these groups by incorporating the Sixth Schedule in the Constitution and entrusting the Governor with certain responsibilities and duties. The Governors of Assam, Tripura and Mizoram have been given wide discretionary powers in the exercise of which they are not bound by the advice of the Council of Ministers. It is anomalous that the same discretionary powers are not available to the Governor of Meghalaya. I believe that Governors can play a crucial role in preventing the intrusion of the worst manifestations of party politics into bodies such as tribal district councils. It may be noted that at present the traditional grassroot level institutions do not permit party politics in conducting their customary duties. It will be desirable to give the Governor wide discretionary powers in the administration of Scheduled and Tribal Areas created under the two Schedules without in any way undermining the competence of the State Legislature.

CONSTITUTION—UPHOLDER OF VALUES

Karan Singh

Introduction

On 13 May 2002, we will be celebrating fifty years of the functioning of the Indian Parliament. It indeed is a great occasion for us to be proud of. This year also gives us an opportunity to look ahead, to look forward to see where we are going. What are the problems ahead? What is the methodology we must use to overcome these problems, including the major instrument, the Constitution of India?

These are well known problems and can be briefly summed up under a few categories.

Coalition Governance and Political Instability

The first is the political problem. The last time that any single party got the majority in the Lok Sabha was in 1984. After that for the last about fourteen years, there has been no clear-cut majority in the Lok Sabha; particularly in the last three Elections, there have been extremely fragmented results and because of this, we have a phenomenon of multi-party coalitions. This extraordinary development has not only fractured and fragmented our society but also the Lok Sabha. These multi-party coalitions are well accepted in democratic countries like Germany, where the coalition is usually of two or three parties. But the multiple coalitions of eighteen, twenty or even twenty-four parties is a peculiar Indian contribution to modern political thought. The result of this is instability, for the simple reason that if we take the position as it is today, for example, the largest party is still short of a clear-cut majority and so it has to bank upon other parties to get that majority. So these smaller parties consisting of two or five or seven members representing regional interests, caste interests or some special interests do not make up a coherent whole and that is why there is constant instability at the Centre.

It is not a question of blaming any particular party, for it is the verdict of the people themselves which gives a fractured decision and this is the cause of instability; obviously, in such a situation, we cannot have a

Government lasting for more than a few months. With the fall of such Governments we have had two General Elections in less than two years in 1998 and 1999—a situation which the Indian Constitution never imagined. This problem of political instability is very important and must be tackled. One model that has been developed by political scientists is the possibility of certain comparatively stable groups emerging. These groups led by the CPI(M), BJP or Congress would form three major groups in a set of forty-five parties. But unfortunately such studies create neat models in theory whereas, in practice, they fail.

Elections

The nexus among money, mafia and election is another problem we have to reckon with. This is a very serious matter because it erodes the very foundation of democracy and challenges the very legitimacy of the whole system. So, we are faced with a whole range of political problems.

Economic Factors

Next, we are faced with economic problems. Despite over five decades of development, we have widespread poverty, illiteracy and population explosion as a result of which any economic development is really a difficult task. It is clear that development and democracy are interlinked in many ways. We need a system where at least the minimum needs of citizens are fulfilled. Democratic procedure is undergoing tremendous pressure, for it is not possible to carry millions and millions of people along if we are not able to provide the basic needs of life—drinking water, medical services, educational and health facilities and so on. If these are not provided, then social tensions are bound to build up to such an extent that sooner or later they will shake up the democratic system. In a way, the lack of development is result of fragmenting and fracturing of political parties.

Fundamental Duties

We have great achievements to our credit in the last fifty years, but we also face some very serious problems. One of them is the total lack of awareness of fundamental duties. There is a great stress on Fundamental Rights, everyone talks about them. But how many of us know that there is also a Chapter on 'Fundamental Duties' in the Constitution and how many of us know how many duties there are! Do we ever teach them? Do we ever mention them? Do we ever talk about them? I was a member of the Drafting Committee of the Swaran Singh Committee which drafted these 'Fundamental Duties'. Our whole polity, our whole way of life is directed towards trying to achieve rights which are legitimate and necessary but totally neglect duties, as a result of which there is the shortcoming of mass participation in developmental processes that is necessary for a major breakthrough.

We have in front of us instances of Germany and Japan. These two countries were totally destroyed during the Second World War, but the way they have rebuilt their countries and themselves is astonishing. Not because their philosophy is older than ours or their culture is stronger than ours, or their individuals are cleverer than we are—not at all. It is simply because they had the capacity to work together in a disciplined and sustained manner which we, in our country, lack and that is why we are a soft society, constantly stressing rights, and never concerned about our duties. It is high time that the intelligentsia realised the need for information on the duties of a citizen. Much has been done indeed, but we still need to do more. In fact, as a member of the Verma Committee, which was specifically set up for this purpose, I studied the subject at length. Justice Verma mentioned that he was astonished at the lack of awareness about the duties of citizens.

Erosion of Values

The second point is the erosion of the value system in our country. It is not that we have to go back to some ancient methodology or situation that is impossible and unnecessary and not even desirable today, but there are certain values which may be gained from any civilization. If we move away from those values, we will be losers. We find that ultimately these values are reflected in some way in our Constitution also. Democracy itself is a major value. Democracy is not only a political system but it also represents our value system.

We should not be pessimists as Indians have tremendous talent and strength, particularly the young who have great potential.

It really is our generation which causes the problems, being immersed in old fashioned idealism. This is the reason that makes it necessary to study the background of the role of the Constitution. The Constitution is not only a legal document but also a statement of certain values that formed the core of our freedom movement, certain universal values of welfare, democracy and socialism, welfare of women and welfare of children. It is full of wisdom and commitment. Much may be derived from the Directive Principles of State Policy.

Not everything can be written down, even in a Constitution. There are some things which we do because we are human beings. There is no law to say that we must follow a certain behaviour pattern. Many people are upset with the Judiciary but everything cannot be specified; sometimes we act out of certain impulses or are influenced by certain world views or certain welfare slogans which impel us to act in a certain manner. Our Constitution is unlike any document, both in its length and breadth, in the whole world and it has sustained democracy in India for more than half a century, which in itself speaks of its utility and effectiveness.

THE LESSONS TO BE LEARNT FROM THE WORKING OF OUR CONSTITUTION

Soli J. Sorabjee

Introduction

Over a period of nearly three years, from 9 December 1946 to 26 November 1949, the Constituent Assembly was solemnly engaged in the challenging endeavour of framing a Constitution for the people of free India. Undoubtedly, contemporary events in the country cast their shadow on the deliberations of the Constituent Assembly. The outbreak of communal riots, partition, Gandhiji's assassination, the Communist upsurge in Telangana, all these played their part in influencing some of the decisions of the Assembly. Yet, it was a memorable achievement. According to Granville Austin, it was "perhaps the greatest political venture since that originated in Philadelphia in 1781".

However, no Constitution devised by human effort and ingenuity can ever be perfect. Indeed, the President of the Constituent Assembly and the first President of free India, Dr. Rajendra Prasad was keenly aware of that fact. But he reposed faith in persons at the helm of affairs, entrusted with working the Constitution.

Constitutional Amendment

Again no Constitution can be permanent. Therefore, every Constitution has a provision for its amendment. May I recall the wise words of one of the great architects of the American Constitution, Thomas Jefferson:

> Some men look at constitutions with sanctimonious reverence, and deem them like the Ark of the Covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment... I am certainly not an advocate for frequent and untried changes in laws and constitution... But I know also, that the laws and institutions must go hand in hand with the progress of human mind... as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times.

Pandit Nehru expressed the same thought in his felicitous language. He said:

> A constitution which is unchanging and static, it does not matter how good it is, how perfect it is, is a constitution that has past its use. It is in its old age already and gradually approaching its death. A constitution to be living must be growing; must be adaptable; must be flexible; must be changeable... as society changes, as conditions change, we amend it in the proper way. It is not like the unalterable law of the Medes and the Persians that it cannot be changed, although the world around may change.

It is necessary to enter a caveat at this stage. The Constitution is not a play thing of the politicians. Its frequent amendment for reasons of political expediency is to be deplored. Amendment of the Constitution must be necessitated by compelling national interest as also in the light of the problems which have surfaced and the lessons we have learnt from its working and implementation over the years.

Our Constitution has been amended several times. Many of the amendments were formal, for reconstitution of States and other such matters. When some amendments to the Constitution impaired its essential features and damaged its basic structure, our vigilant judicial sentinels courageously checked such attempts and preserved the identity and integrity of our Constitution. The basic structure doctrine is the unique contribution of our Supreme Court to the development of our constitutional jurisprudence.

Working of the Constitution

We have worked the Constitution for fifty-two long years. It can be said with confidence that our Constitution on the whole has stood the test of time. However, it is undeniable that certain deficiencies and distortions have surfaced during the working of the Constitution in the last fifty-two years. These need to be redressed after a constructive national dialogue and without tampering with the basic pillars and foundations of our Constitution.

Political Instability

What are the problems that have confronted us in the last five decades? What are the lessons to be learnt? To my mind, the first and foremost is the problem of political instability leading to the tumult and turbulence of frequent elections. Deleterious consequences arising from such a situation are self-evident and do not require elaboration. When there is political instability, democratic institutions will not take roots but will flounder.

Economic prosperity and well being will elude us with frequent changes of Government. What is worse, the common person will develop an allergy to frequently casting his ballot and in a spirit of despair and cynicism, may become unwilling to exercise his valuable right of franchise, which is an essential requirement of democracy.

Some solutions have been suggested. One of them is that there should be a fixed term for Parliament. I personally do not agree with that suggestion. The second solution is that there should be a constructive vote of no-confidence. In other words, before a vote of no-confidence is moved, the party which moves it, must satisfy the President that it will be able to form a Government with a reasonable prospect of stability. The idea is that there should be no political vacuum. Another suggestion is about the introduction of a system of proportional representation in voting. I am not advocating for any particular suggestion or solution. All I want to emphasize is that this problem of political instability requires to be addressed urgently and in depth.

Fundamental Rights

Another experience we have had is the expanding range and dimensions of human rights. Certain Fundamental Rights are not expressly mentioned in Part III of our Constitution. Nonetheless, they have been judicially deduced from other provisions of the Constitution and have been accorded the status of Fundamental Rights. For example, freedom of the Press; right to travel or leave one's country and to return; right to privacy; guarantee against cruel, inhuman and degrading punishment; and right to education.

It is a matter for serious consideration whether these basic human rights, which are found in other Constitutions and also in the International Covenant on Civil and Political Rights, (ICCPR) 1966, which our country has ratified, should not be specifically provided for in the Constitution rather than depend on the vagaries of judicial interpretation. Thereby, we can enlarge the Fundamental Rights of the people and strengthen our Constitution.

Another interesting development has been that certain Directive Principles have been judicially incorporated into the expression 'life' in article 21. 'Life' has been interpreted as not merely physical existence but the right to live with dignity. As a result, right to medical relief, right to a clean, pollution free environment, right to wages consistent with human dignity, have in effect become Fundamental Rights. Should these Directive

Principles be specifically included in the Fundamental Rights Chapter by a constitutional amendment? This is a subject which should also receive serious consideration.

I may point out that there is nothing unusual or extraordinary about adopting such a course. Indeed, the 1996 South African Constitution, in its Bill of Rights, guarantees that everyone has the right to have access to adequate housing and requires the State to take reasonable legislative and other measures within its available resources, to achieve the progressive realization of this right. It also guarantees everyone the right to have access to health care services, including reproductive health care; sufficient food and water; and social security, including, if they are unable to support themselves and their dependents, appropriate social assistance and requires the State to achieve the progressive realization of each of these rights. Article 29 of the Constitution provides that everyone has the right to a basic education, including adult basic education, and to further education, which the State, through reasonable measures, must make progressively available and accessible.

Fundamental Rights in Chapter III are enforceable against the State as defined in article 12 of our Constitution. The definition of 'State' in article 12 includes 'the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.' Thanks to our Judiciary, the expression 'State' has received an expansive interpretation so as to include statutory bodies and corporations and even non-statutory institutions which are under the overall and effective control of the Government. Experience has shown that non-State actors can also violate Fundamental Rights on a massive scale. For example, bodies and entities who exercise quasi-governmental powers or which discharge public functions which have far-reaching public consequences may be regarded as 'State' for the purpose of article 12. In the United Kingdom, in the Human Rights Act which came into force on 2 October 2000, 'public authority' is defined as 'any person some of whose functions are functions of a public nature'. It is a moot question whether the definition of the State should not be expanded to provide greater and more effective protection of the Fundamental Rights of our people, especially against the all pervasive evil of discrimination on the grounds of religion, caste and gender.

President's Rule

Another sordid experience of the working of the Constitution has been the misuse of article 356 which empowers imposition of President's rule in the States. Apparently, the temptation of invoking article 356 is too difficult to resist for any political party. The Supreme Court in *Bommai's case* ruled that the exercise of power under article 356(1) is not beyond judicial review and it has further indicated the parameters of judicial review which are fortunately not too narrow or restricted. This development is salutary and provides a vital check against the onslaught on the federal fabric of our Constitution by the perversion of article 356. But remember, the judgment in *Bommai's case* on this aspect is by a narrow majority of 5-4. I, for one, would be happy if judicial review is expressly provided in article 356. There is nothing extraordinary about this course. Section 18 of the 1986 Philippines Constitution empowers imposition of martial law subject to certain safeguards, one of which is judicial review, in these terms: "The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law... and must promulgate its decision thereon within thirty days from its filing."

This provision was the outcome of the bitter lessons learnt by the people of Philippines during the autocratic regime of President Ferdinand Marcos.

Ninth Schedule and Article 31B

A classic instance of the distortion of our Constitution is furnished by the history of article 31B and the Ninth Schedule. The Allahabad and Patna High Courts had struck down provisions relating to *zamindari* and land reform legislation. Pandit Nehru pleaded with Parliament that such legislation should be placed beyond judicial challenge on the ground of violation of Fundamental Rights. Panditji's plea was to include only 13 pieces of legislation relating to land or agrarian reforms in the Ninth Schedule. Today, the number of Acts in the Ninth Schedule is nearly 300. The nature and contents of some of the Acts placed in the Ninth Schedule have nothing to do with agrarian or land reforms: for example, the Monopolies and Restrictive Trade Practices Act; the Foreign Exchange Regulation Act; the General Insurance Nationalisation Act, etc. What requires serious consideration is whether article 31B should be repealed because right to property is no longer a Fundamental Right or whether in any case article 31B should be confined to laws which, in pith and substance, deal with land or agrarian reforms.

Anti-Defection Law

Another painful lesson we have learnt is about the failure of the Anti-Defection legislation enacted in the Tenth Schedule of the Constitution.

Defection is the worst form of political corruption and moral perversion. People cross the floor for reasons of political gain and opportunistic considerations and grossly betray the faith and confidence the electorate reposed in them. The act of defection is nothing short of breach of faith with the electorate. This evil needs to be stamped out of our political system. That was the aim and purpose underlying the Tenth Schedule. Regrettably, it has badly failed in its implementation. One of the main reasons is that Speakers in the States who have been entrusted with the task of deciding whether a member has incurred disqualification on account of defection have not measured up to expectations. Their decisions generally have been actuated by partisan political considerations and are biased in favour of the party which appointed them. In my view, it is imperative that the power of disqualification of a member should be entrusted to a multi-member body like the Election Commission which is a constitutional authority.

Appointment of Governors

Another sad experience has been that the implied assumptions about the kind of persons who would be appointed as Governors and the grounds on which they would be removed have not been realized. The expected conventions have not developed. In practice, Governors have been removed with the change of Government, at times unceremoniously, and at times without any notice. They are treated worse than a peon or a *chaprasi* in government service. This needs serious looking into because the quality of the Governors appointed and security against their indiscriminate removal have an impact on imposition of President's Rule which is based largely on the report of the Governor of a State.

Appointment and Removal of Judges

Another recent lesson has been the inadequacy and ineffectiveness of the process for the removal of a judge of the Supreme Court or a High Court, popularly known as the impeachment process. Experience has shown that this process, apart from being tardy and cumbersome, tends to get politicised as was demonstrated in the case of the motion for impeachment of Justice V. Ramaswamy. What is needed is a mechanism which, whilst ensuring the independence of the Judiciary, can also provide an effective non-political method for the removal of a judge.

That takes us to the question about the process of appointment of a Judge. If judges are properly appointed on their merit and with particular regard to their integrity, the occasion for their removal would seldom arise. At one stage, the Executive had the final word in the matter of appointment of judges which was a totally unsatisfactory state of affairs. We want independent judges, not *sarkari* judges. Now the wheel has turned full circle and the appointment of judges rests exclusively with a colloquium of five judges in the Supreme Court and three judges in the High Courts. This also is not quite satisfactory because in the matter of appointment of judges, there should be Executive participation and the voice of the Bar should also be heard. The demand for a National Judicial Commission has been voiced for a long time. The crux of the problem lies in the proper composition of this Commission. To my thinking, in the Commission, there should be judicial preponderance with Executive participation and representation of the Bar.

Criminalisation of Politics

Another painful experience is the election of persons with criminal records to Legislative Assemblies and to Parliament. It is shocking that persons with criminal records would be passing laws and dictating policy for us and our children. There is urgent need to provide for disqualifications in the Constitution to prevent this shameful phenomenon. There is also a debate whether any qualification should be prescribed for MPs and MLAs. If so, what should be those qualifications? In a poor country like India, property qualifications would be out of place. What about educational qualifications? But then, a person without a degree can be more intelligent, industrious and honest than one who has a string of degrees and diplomas attached to his name. Should there be minimum literary qualifications because unless the member can read and write, how will he effectively participate in the deliberations of the House? These are vexed problems which we have to consider.

In this context, the concluding remarks of Dr. Rajendra Prasad in the Constituent Assembly, fifty years ago, have a compelling relevance today. He said: "If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country... India needs today nothing more than a set of honest men who will have the interests of the country before them...."

I am afraid constitutional amendments will not result in our getting men of character. Even amendment of the basic structure of the Constitution will not attain that result. We have to change the basic structure, the moral fabric of the representatives of our people. That is a long and time consuming process but we cannot drag our feet or falter in this respect without peril to ourselves and to future generations. We must strive for restoration of the sense of values, basic simple values of truth, honesty and decency.

Our founding fathers had a grand dream, or rather a vision, of India where poverty, hunger, disease and exploitation would end and the people of India would be assured justice, liberty, equality and fraternity, assuring the dignity of the individual.

In this imperfect world, all dreams are not fulfilled. Social justice and gender justice still elude us and inequalities do surround us. Affronts to individual dignity are in evidence in abundance. But that is no reason for despondency or cynicism. Let us continue to dream, without making dreams our masters. Let us resolve to translate the vision and the unfulfilled dreams of the founding fathers into living realities and take a pledge to redeem the tryst with destiny and the pledges and promises in our Constitution, not substantially, but in full measure.

NEED FOR REVIEW OF THE CONSTITUTION

M. Rama Jois

Introduction

We, the people of India, enacted and gave unto ourselves the Constitution of India with the object of giving ourselves a democratic system of governance, secular in essence, to ensure social, economic and political justice, liberty of thought and expression, belief, faith and worship, equality of status and opportunity to all and to promote among them feeling of fraternity, dignity of individual and the unity and integrity of the nation as set out in the Preamble of the Constitution. The entire nation remains grateful to the founding fathers of the Constitution who, though not elected under adult suffrage, were the real and noble representatives of the people. Generally, it has worked excellently for half a century. The basic principles set out in the Preamble to the Constitution, constitute the elements of its basic structure as laid down by a thirteen judges' bench of the Supreme Court in its historic decision rendered in *Kesavananda Bharati* [A.I.R. 1973 S.C. 1461].

The performance of Parliament during the last fifty years, by and large, is excellent. It has so far effected eighty-five amendments to the Constitution and also enacted various laws and amended them from time to time, in order to fulfil the aspirations of the people and the requirements of the nation. As the Parliament of the biggest democracy in the world, having the richest cultural heritage, its performance is such that people respect it with a sense of gratitude. There can, however, be no doubt that if on account of experience of the working of the Constitution, together with the amendments made, it has become necessary to strengthen the elements of the basic structure of the Constitution in the interest of the nation, it has to be undertaken. While doing so, all the political parties should co-operate to bring about the necessary amendments which are in the interests of the nation.

The question, therefore, is whether there is necessity of any amendment to strengthen the elements of the basic structure of the Constitution. On a dispassionate and in-depth consideration of the matter, I am placing some important suggestions before the nation through this article.

Appointment of Prime Minister/Chief Ministers

Under the Constitution, we have adopted a democratic system of governance under which the Executive power is vested in the Council of Ministers. Article 74 of the Constitution states that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. Article 75 provides for appointment of Prime Minister by the President. Article 163 and 164 are corresponding provisions regarding Council of Ministers for the State and appointment of a Chief Minister by the Governor. There are no guidelines as to who could be appointed Prime Minister or Chief Minister. But these provisions were incorporated on the basis that it will be done according to well established democratic norms under modern democracies, in that an elected member of the Legislature alone will be elected as the Leader of the political party which has secured absolute majority in the General Elections to the Legislature and such Leader would be appointed as Prime Minister or Chief Minister, as the case may be.

By and large, the Constitution did function on such healthy lines for more than two decades. Thereafter, the problems began on account of several political parties coming into existence, making caste, religion, language, region as the basis, with the object of securing a few seats and on that basis bargaining for ministership, or other public offices or other kind of largesse. Such narrow, selfish politics has caused division of the people and the electorate on the basis of caste, religion, language and region, leading to fragmented verdicts and hung Legislatures. As a result, on several occasions, formation of Government has become extremely difficult, painful and subject to manipulations, resulting in wastage of nation's time and energy.

The result is that, small parties or independents are gaining ascendancy in power politics and they are putting forward demands for ministerial berths for the legislators of supporting parties or other demands which are being conceded at the cost of the national interest. It is this situation which is responsible for instability, frequent fall of Governments, frequent elections, etc. It has affected our economy also badly. It has also resulted in the Prime Minister/Chief Minister spending most of their time and energy in saving the Government, than in carrying on administration.

The specific problems to be dealt with in this regard are:—

- Appointment of Prime Minister/Chief Minister and, thereafter, asking him to take vote of confidence, which is just like putting the cart before the horse which is resulting in a non-functioning Government till vote of confidence is passed.

- Spending considerable time and wasteful expenditure for the debate on the vote of confidence which serves no purpose as by such debate no one can be persuaded to vote in favour or against the motion, as it stands pre-determined by party affiliation read with the Tenth Schedule to the Constitution.
- Instability created by floor crossing by ingenious methods utilizing the loopholes in the Tenth Schedule and in a few cases by Governors acting in a partisan manner.
- Though the wording of clause (5) of article 75 and clause (4) of article 164 indicates that a non-member of the Legislature could be appointed as a Minister of the Union or the States as the case may be, for a period not exceeding six months, it has been used to even appoint Prime Minister/Chief Ministers and when this was challenged, the Supreme Court has interpreted that the word Minister in those clauses include Prime Minister/Chief Ministers and has upheld such appointments, [1971 (1) S.C.C. 616 and 1996 (6) S.C.C. 734]. It is respectfully submitted that this view is erroneous. This is evident from the consequence indicated as to what happens when a non-member who is appointed as Minister is not elected to the Legislature within a period of six months. The only consequence indicated in these articles is that he ceases to be a Minister. But the consequences are entirely different and serious in cases where a non-member appointed as a Chief Minister or Prime Minister is not elected to the Legislature within a period of six months. In such a case, it is not as though he alone ceases to be a Chief Minister/Prime Minister, but what happens is, his Government falls and not only he ceases to be the Chief Minister/Prime Minister, but all the other Ministers who are members of the Legislature also cease to be Ministers. Such a consequence was not at all indicated by these two articles. I respectfully submit that this one reason is sufficient enough to hold that the word 'Minister' in clause (5) of article 75 and clause (4) of article 164 was not intended to include the Prime Minister/Chief Minister, but was intended to enable the Prime Minister/Chief Ministers to appoint a deserving, eminent person who is not a member of the Legislature as a Minister in the interest of administration or to enable a Minister who was a member of an Upper House and whose tenure came to an end, to continue as Minister and getting himself elected within six months. These aspects were not pointed out to the Supreme Court in both the cases. Further, one

becoming the Prime Minister/Chief Minister first and then to contest for the Legislature is opposed to democracy and equality, both of which are elements of basic structure of the Constitution. Politicians, however, find the interpretation useful to induct non-members as Prime Minister/Chief Ministers whenever it suits them. Therefore, the fact remains that the interpretation now given holds the field until and unless the Supreme Court reviews its decision and gives an interpretation in the above manner in some future case.

In order to solve these problems, the Constitution should be amended on the lines of the Basic Law of the Federal Republic of Germany. According to article 63(1) of the German Constitution, a member of Parliament to be appointed as Federal Chancellor which is the office corresponding to Prime Minister, has to be elected first by the Parliament without debate, with majority of votes of its members. The President has to appoint the person so elected as the Chancellor. According to article 67, a resolution expressing lack of confidence in the Chancellor could be passed only by simultaneously electing the successor to the Office. Further, it is also an essential principle of democracy that Prime Minister/Chief Minister should have been elected by the people and not elected/nominated to Upper House. In England, it is firmly settled that only a member of the House of Commons could become the Prime Minister.

In the light of these reasons, we can find solutions to the problem which we are facing, by amending our Constitution on the following lines:—

- After every General Election, the Leader should be elected first on the floor of the Legislature without any debate, making it obligatory for the President/Governor to appoint the Leader so elected as the Prime Minister/Chief Minister, as the case may be.
- The Leader should be a member of the Lok Sabha or the Legislative Assembly, as the case may be.
- In the absence of an open and clear majority for any party, the procedure for election of the Leader should be based on the method of elimination, in that if there are more than two candidates and in the event of none of them getting 51 per cent or more votes, the candidate who has secured the least number

of votes should be deleted and a fresh voting should be taken among the remaining candidates. The procedure should be continued until a person who has secured 51 per cent or more of the votes gets elected. In the alternative, the election could be by the system of proportional representation by means of single transferable vote. In each of the systems, voting should be by secret ballot.

- Once elected by majority and appointed as the Prime Minister or Chief Minister, any resolution for his removal should be coupled with the proposal to elect a new Leader with a provision for joint debate and joint voting. If a new Leader is elected by majority, he should be appointed as the Prime Minister or Chief Minister, as the case may be, replacing the person who failed to win a vote of confidence.
- In the event of the Prime Minister or the Chief Minister not belonging to a party or group of parties who have signed a joint declaration to run the Government, who enjoy absolute majority in the Legislature, he should have the liberty of taking any member of the Legislature of his choice as Minister, to whom the provisions of the Tenth Schedule should be made inapplicable so long as he continues to be a Minister.

The amendment of the Constitution on these lines provides a solution to the problems which have come into existence. It removes the difficulties faced by the President, removes instability and also avoids problems created for or by the Governors. It will also be in conformity with the decision of the Supreme Court in *Bommai's case* holding that floor test is obligatory.

Premature Dissolution of Elected Legislatures

The nation has suffered political and administrative instability on account of political manipulations and animosity by the abuse of power under article 356 and premature dissolution of elected Legislatures of the States as also of the Lok Sabha. Apart from this, the election expenses incurred both by the State and the candidates has resulted in enormous waste of our national resources. If a commission is appointed to find out how much loss the nation has suffered right from the date when the power under article 356 was misused first time in the year 1959 in Kerala and thereafter about hundred times, the figures will be astounding. Our country cannot afford to involve in such wasteful expenditure. Therefore, it is essential that the Constitution should be amended to ensure that the elected State Legislative Assemblies as well as the Lok Sabha cannot be dissolved prematurely and that they would get dissolved only after the term for which they were elected comes to an end.

However, in order to protect public interest:

- Article 355 should be amended to give more power to the Union to protect the State.
- Article 356 should be amended enabling the dismissal of a State Government only, but not the elected Legislature, enabling it to elect a new Leader other than the dismissed Chief Minister. Further, such Presidential Proclamation should be subject to approval only by the Lok Sabha as the composition of the Rajya Sabha reflects the strength of representatives elected at an earlier election, whereas the Lok Sabha represents the latest will of the people and, therefore, the Rajya Sabha should not be given the power to frustrate the resolution of the Lok Sabha.

Necessity of Simultaneous Elections to State Legislatures and Lok Sabha

From the date of commencement of the Constitution, the first four General Elections to the Lok Sabha and elections to the State Legislatures were held together. But from 1970 onwards, for political reasons, the elections for the State Legislatures and the Lok Sabha were separated. The explanation for this no doubt has been that in the elections to the Assemblies, the local issues would get prominence and, therefore, it was necessary to have the elections to the State Legislatures and the Lok Sabha separately. The argument is ingenious but not convincing. The Indian electorate are quite mature and they are capable of distinguishing elections to the State Assemblies and to the Lok Sabha, even if held together. It is in the national interest and also in the interest of the candidates that elections to the State Legislatures and the Lok Sabha should be held together. This will subsequently reduce the election expenses and waste of national resources.

Fixed Election Period

Another problem the nation has been facing on account of premature dissolution of the State Legislatures or the Lok Sabha for political reasons is the fact that the elections are held sometimes during utmost cold winter and sometimes during extreme hot weather thereby causing considerable hardship to the electorate and the party workers as also to the leaders of political parties. The elections are also held during heavy rainy season.

Therefore, it is necessary that the period of election for the Assemblies and for the Lok Sabha should be fixed constitutionally without giving any room for manipulation. It should be during the months of February and March, as during that period in almost all the parts of the country there would be congenial climate.

Problems arising out of there being no bar to contest from more than one Constituency

In the absence of any bar on the candidates to contest from more than one Assembly or Lok Sabha seat or for contesting an Assembly seat as well as the Lok Sabha seat, experience has been that several candidates contest from more than one constituency and after election if they have won from more than one constituency, they are required to resign, retaining only one seat. On account of this, people have to bear the expense of another election. Therefore, there should be a constitutional bar on the candidates from contesting from more than one constituency in the elections to the Lok Sabha or the State Assembly, as also on contesting simultaneously for the Lok Sabha and the State Assembly.

Problem arising out of there being no ceiling on number of Ministers

The non-existence of a ceiling as to the number of Ministers is being totally abused as not only a large number of persons are made Ministers, but in certain cases, legislators of all supporting parties are also being made Ministers. This is most unhealthy and has resulted in an enormous drain on the exchequer. Therefore, ceiling should be fixed in that the number of Ministers shall not exceed ten per cent of the legislators.

Reservation for Women

Irrespective of the fact as to whether there is any rational basis for reserving seats in favour of women in the election to the Legislature, a consensus has emerged among all the political parties that adequate representation for women should be provided for in the House of the People and the Legislative Assemblies of the States. Even so, passing of a bill amending the Constitution providing for one-third reservation of seats within the existing number of members of the House of the People and the Legislative Assemblies has been found difficult and opposed by many. The main reason for the opposition is that though legally a man is eligible to contest from any of the constituencies in the country for the Lok Sabha or for any of the Assembly constituencies in the State, as the case may be, in practical terms, every man has only one constituency from which alone he can contest, and if that is reserved, he stands completely deprived of his democratic rights and stands discriminated against. There is also no rational basis to reserve any seat in favour of women. Therefore, it may be feasible to make amendments to the Constitution by creating additional number of seats to the extent of 10 per cent, by increasing the existing strength of the House of the People and the Legislative Assemblies and reserving all these additional seats for women. Further, there should be a special method of election to these seats by the elected members on the lines prescribed under article 171 for election by the members of the Legislative Assembly to the Legislative Council. Elected members of the Lok Sabha and State Assemblies will be the electors for these seats which will not upset the majority secured at the General Elections.

This method would relieve women from incurring election expenses or undergoing strenuous and gruelling campaign. This would encourage many deserving women to agree to become members of the House of the People/Legislative Assembly. Also, the aspirations of backward classes and minorities could be easily fulfilled by political parties while giving tickets, as giving tickets itself would be a guarantee for being elected.

No doubt the proposal is to reserve less than 33 per cent, but this ten per cent with the special method of election is far more advantageous to women as it would be both inexpensive and an easier method and moreover this will be in addition to the right of women to contest all the existing seats, the scope of which is bound to increase from election to election.

Reservation in Election to Local Bodies

By the 73rd and 74th Amendments to the Constitution, a provision for constitution, organization and powers of the local bodies was specifically incorporated into the Constitution. This was a very important step taken by the Parliament to ensure that vitality for the local bodies is directly received from the Constitution itself and also prompt election to local bodies which was being avoided by political parties for decades whenever they found that urban voters were against the ruling party. However, in making provision for election, instead of limiting the reservation in favour of Scheduled Castes and Scheduled Tribes in general election to the local bodies in the same manner and extent as is done in respect of House of the People and the Legislative Assemblies, the Parliament made the following extraordinary provisions:

- provision for reservation in favour of backward classes;
- reservation of one-third of the total seats in favour of women in local bodies; and

- reservation even in the election of Chairperson to the extent of one-third in favour of women and in favour of Scheduled Castes and Tribes in proportion to their population and provisions was also made enabling reservation in the office of Chairpersons, in favour of backward classes.

These provisions are inconsistent with almost all the elements of basic structure of the Constitution such as equality, political justice, secularism, fraternity as also unity and integrity of the nation. One basic factor which has been overlooked by the Parliament is the clear difference between selection and election. There can be no doubt that in the matter of selection to various courses in educational institutions and selection for appointment to various services of the State, reservation in favour of Scheduled Castes/ backward classes is a must in order to ensure equality, because but for the reservation, there will be unequal competition between the backward class and forward class. But election is completely different. In view of one man one vote, all are equally situated and therefore there would be no unequal competition. The concept of backward classes is wholly irrelevant in elections. Further, as backward classes are in majority, it is a matter of common knowledge that backward classes are getting elected for more than 75 per cent of the seats in the elections, without reservation. It is, in my humble opinion, a retrograde step and it is evidenced from the fact that the founding fathers of the Constitution did not make any reservation in favour of backward classes and women in the elections to the Legislature, but restricted it only to Scheduled Castes and Tribes on account of special social disability suffered by them. There has been no suggestion from any quarter for reservation in favour of backward classes in any election to local body or Legislature. The second level reservation of office of Chairperson destroys the concept of equality and is totally arbitrary. This measure is highly injurious to the feeling of fraternity among the people of the country as also the unity and integrity of the nation.

Conferment of Equal Right to Establish and Administer Educational Institutions on All

Article 30 was incorporated in the Constitution to allay the apprehensions of the religious and linguistic minorities that at some point of time in future their basic right to establish and administer educational institutions might be interfered with by legislations. It was not intended to deny the right to establish and administer educational institutions to the non-minorities. However, on account of interpretation of article 30 by the Supreme Court to the effect that the fundamental right to establish and administer educational institutions has been conferred only on religious and linguistic minorities, a large number of citizens, including Scheduled Castes and Scheduled Tribes and other backward classes who are educationally backward, have no such right. This has brought about invidious discrimination against the majority in the matter and they are feeling that they are being subjected to injustice and inequality.

When this denial of equality to majority was raised before the Supreme Court in the case of *State of Kerala v. Mother Provincial* [A.I.R. 1970 S.C. 2079; 1971 (1) S.C.R. 734], Sri Mohan Kumaramangalam who was appearing on behalf of the State of Kerala agreed that there should be no discrimination between minorities and non-minorities in the matter of establishing and administering educational institutions. Accordingly, he made a statement to that effect before the Supreme Court of India. The statement was recorded and the Supreme Court directed that Section 63 of the Kerala Universities Act shall not be enforced both against minorities and non-minorities. The relevant portion of the judgment reads:

> The majority institutions involved article 14 and complained of discrimination. However, at a later stage of proceedings, Mr. Mohan Kumaramangalam stated that he had instructions to say that any provisions held inapplicable to minority institutions would not be enforced against the majority institutions also. Hence, it relieves us of the task of considering the matter under article 19(1)(f) not only in respect of minority institutions but in respect of majority institutions also. The provisions of Section 63 affect both kinds of institutions alike and must be declared *ultra vires* in respect of both [1971(1) S.C.R. 734 at 746-747].

However, the above case was decided on concession and no law was declared by the Hon'ble Supreme Court regarding discrimination between minority and non-minority educational institutions. As a result, there are several discriminatory provisions in the existing laws and this has caused dissatisfaction and heart burning among the majority who have established educational institutions. Having due regard to the fact that equality is a basic structure and denial of the right to equality to majority, including Scheduled Castes and Scheduled Tribes, is an invidious discrimination against them, it is imperative that article 30 should be amended conferring equal rights on all sections of society, retaining the rights conferred on minority intact.

Constitution and Organisation of High Courts

For historic reasons, there have been some differences in the constitution, organization and general jurisdiction of the High Courts, though all the High Courts are equal in all respects. For instance, existence of appeal from the decision of a single judge of a High Court to two other judges of the same High Court who are no superior court in some of the High Courts which are called "Letter Patent Appeal" is wholly unconstitutional. Taking inspiration from this, some State Legislatures have created similar appeals. In fact, realizing this, the Arrears Committee on High Courts has recommended its abolition. Maharashtra and Madhya Pradesh have abolished it and the question of their validity is now pending before the Supreme Court. Apart from this article 226 for the first time conferred power on the High Court to issue writs. Once a single judge allows or dismisses a writ petition, it is the decision of the High Court and not merely of the judge. High Court has no jurisdiction to hear appeals against the decision of the High Court itself as appeal means only to a superior court as held by the Supreme Court in A.I.R. 1970 S.C.1. This anomaly must go by abolishing such appeals.

While such appeals to a Division Bench which are anomalously called Intra-court appeal should be abolished by a parliamentary legislation, an independent Court of Appeal/Higher Appellate Division in each State as part of the High Courts should be created to substitute them by amending the Constitution, as a final court of appeal against the decision of the High Court in all ordinary civil and criminal matters. Requisite number of judges who have put in prescribed minimum service as High Court judge should be appointed to the Court of Appeal. This will save litigants from enormous expenditure in filing Special Leave Petitions even in ordinary civil and criminal matters.

Then, only in exceptional cases, if found expedient by the Supreme Court, it could interfere under article 136. This will reduce the heavy burden of ordinary civil and criminal appeals by way of Special Leave Petitions on the Supreme Court enabling it to devote its time and energy to decide important constitutional and other matters.

In order to deal with certain types of cases which require specialized knowledge and experience, it is also necessary to create Special Divisions in the High Courts like Service and Labour Divisions and Taxation Division providing for appointment of persons who practised substantially in those branches as judges of those divisions. This is all the more necessary with the decision to amend the Administrative Tribunals Act providing for abolition of Administrative Tribunals.

In fact, in the recent amendment to CPC, Intra-court appeals within the High Court is rightly abolished. But not only that Act is not yet brought into force, but also a reverse step of restoring such appeal by an amendment to the amendment is under consideration which should be given up.

Use of Official Language of the State in Subordinate Courts

After the formation of linguistic States, the Official Language Act was enacted in 1963. Thereafter, several States have substituted English with the official language of the State for use in subordinate courts. For instance, Karnataka, Tamil Nadu and most of the Hindi speaking States have done it. But still there are States in which English continues to be the official language of the subordinate courts. In particular, it is so in the National Capital, Delhi. This situation does not conform to democratic principles because the administration of justice must be carried on in the language of the people; it is also inconsistent with India having attained Independence, getting rid of the English rule. Though it is competent for the concerned Governments to replace English with the official language by issuing circulars under Section 137 of the Civil Procedure Code and Section 272 of Criminal Procedure Code, they have failed to do so. Hence, an article prescribing the official language of the State concerned as the language of the subordinate courts should be incorporated as article 235-A in the Constitution in national interest and self-respect.

Primary Education in Mother Tongue

Article 350-A of the Constitution expressly provides that it shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instructions in the mother tongue at the primary stage of education to children. A Full Bench of the Karnataka High Court in the case of *General Secretary, Linguistic Minorities Protection Committee v. State of Karnataka* [I.L.R. 1989 Karnataka 457] held that primary education must be in the mother tongue. The Supreme Court in the case of *English Medium Students Parents Association v. State of Karnataka,* upheld the judgment of the Karnataka High Court [A.I.R. 1974 S.C. 1702]. The relevant excerpts read:

> All educational experts are uniformly of the opinion that pupils should begin their schooling through the medium of their mother tongue. There is great reason and justice behind this. Where the tender minds of the children are subject to an alien medium, the learning becomes unnatural. It inflicts a cruel strain on the children which makes the entire transaction mechanical. Besides, the educational process becomes artificial and tortuous. The basic knowledge can easily be generated through the mother tongue. The introduction of a foreign language tends to threaten to atrophy the development of mother tongue.

In the same judgment, the Supreme Court also held that the Karnataka Government Order prescribing that primary education shall be in the mother tongue was constitutionally valid and was not violative either of article 14, or the rights of minorities under articles 29 and 30. In this context, it will be worthwhile to recall what Mahatma Gandhi said: "The medium of instruction should be altered at once and at any cost, the provincial languages be given their rightful place. I would prefer temporary chaos in higher education to the criminal waste that is daily accumulating."

Unfortunately, despite the constitutional provision, the views of Mahatma Gandhi and the declaration by the Supreme Court, the craze for pre-primary and primary education through the medium of English is increasing. If the energy of our children should not be wasted in learning a new language at pre-primary and primary level and moreover, if the children should develop their roots in our civilization and culture, resulting in establishing our national identity, primary education must be in the mother tongue. Therefore, the Constitution should be amended making that pre-primary and primary education shall be in the mother tongue subject to such exception as may be provided by law and giving option to the learning of any language of their choice, including English, at higher level under the well established three-language formula.

Manufacture and Sale of Intoxicating Drinks should be Abolished

Just as untouchability, a social evil, is abolished by article 17, another social evil, namely consumption of intoxicating drinks except for medical purposes should be prohibited by inserting an article under the Fundamental Rights Chapter to the effect that the manufacture, sale and consumption of alcohol except for medical purposes is prohibited.

Fundamental Right to Perform Fundamental Duties

The unique method evolved by the great thinkers who moulded the civilization and culture of this land was to secure the rights to every individual by creating a corresponding duty in other individuals. This was for the reason that they considered that the sense of right always emanates from selfishness whereas the sense of duty always generates selflessness. Therefore, every kind of right evolved which became the values of our culture were based on the duty of every individual towards other individuals. For example, the duty of parents towards their children, and the duty of children to maintain their parents in old age; duty of teachers towards their students, and duty of students towards their teachers; duty of every individual in a family towards other members of the society; duty of the State towards citizens, duty of citizens towards State, were all created to protect the basic human right of happiness to all. The creation of a duty in one individual necessarily resulted in the creation of right in other individuals and the protection of such rights. Mahatma Gandhi, who personified all the human values evolved in India, eulogized this idealism in the following words: "India is essentially *Karmabhumi* (land of duty) in contradistinction to *Bhogabhumi* (land of enjoyment)."

But in the Constitution, stress was only on the rights. The Fundamental Duties which should have been incorporated first were not at all included but very rightly came to be included by the Forty-second Amendment. Article 51A specifies very valuable Fundamental Duties to be performed by citizens, but there is no article which confers the right to perform duty. It is necessary to add in the Constitution, an article providing that: "Every citizen shall have the Fundamental Right to discharge his Fundamental Duties, in accordance with the procedure established by law"

Name 'India' should be Deleted

The name of our country from time immemorial is *Bharat* and is evidenced by all ancient works commencing from *Mahabharat*, and in particular *Vishnu Purana* contains an entire chapter dedicated to the description of the country wherein also the name of the country is given as "Bharat". It reads:—

उत्तरं यत् समुद्रस्य हिमाद्रेश्चैव दक्षिणम्।
वर्षं तत् भारतं नाम भारती यत्र सन्तति:॥

(The country which lies to the north of the seas and to the south of Himalayas, is *Bharat*, and the people of this country are "Bharateeyas". [CH-III, Verse-1]).

The name India was given by the foreign rulers. The moment we got rid of foreign rule, we should have also got rid of the name given by them to our country. Dr. Radhakumud Mukherjee, the great historian of our times, in his famous book *Fundamental Unity of India* has stated: "The name *Bharat Varsha* is not a mere geographical expression like the term "India", having only a physical reference. It has a deep historical significance symbolizing a fundamental unity."

But, strangely, in article 1 of the Constitution, the name 'India' is retained along with "Bharat". Two names are unnecessary. It is also necessary that the name of our country must be in conformity with our National Anthem and national slogan. It is well known that in our National Anthem the words used are *Bharata Bhagya Vidhata* and not "India *Bhagya Vidhata*" and similarly our national slogan is *Bharat Mata Ki Jai* which has a tremendous appeal for fraternity, unity and integrity of the nation, and not "India *Mata Ki Jai*". Hence, the word 'India' should be deleted in article 1 and in all places in the Constitution and the laws wherever it occurs and replaced with "Bharat".

AMENDMENTS TO THE CONSTITUTION OF INDIA—AN OVERVIEW

Subhash C. Jain

In all, eighty-five Amendment Acts have been passed amending various provisions of the Constitution as on 21 February 2002 and five Bills are pending consideration of Parliament. Twenty-one Bills seeking to amend certain provisions of the Constitution lapsed from time to time on the dissolution of Lok Sabha. (For details, *see* Annexure). The salient features of the Amendments so far effected in the Constitution are broadly classified in three categories as under:

A. Amendments Pertaining to Fundamental Rights and Issues Concerning Social Justice

- Articles 31A, 31B and Ninth Schedule were added to make laws for acquiring *Zamindaris* unchallengeable in the courts in 1951 by the Constitution (First Amendment) Act. The Ninth Schedule at that time consisted of 13 entries; now, it has 284 entries.
- Clause (4) was inserted in article 15 by the Constitution (First Amendment) Act, 1951 empowering the Legislature to make special provisions for the advancement of socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes.
- Article 31 was amended to make the amount of compensation upon acquisition of property for a public purpose non-justiciable. This article and article 19(1)(f) have since been omitted from Part III on Fundamental Rights by the Constitution (Forty-fourth) Amendment Act, 1978 and instead, article 300A relating to right to property has been added.
- The Constitution (Twenty-fourth Amendment) Act in 1971 was enacted to get over the decision of the Supreme Court in *Golak Nath's case* and to expressly provide that Parliament had the power to amend any provision of the Constitution in accordance with the procedure laid down in article 368. This included the power to amend Part III relating to the Fundamental Rights.

- A new article 31C was inserted by the Constitution (Twenty-fifth) Amendment Act, 1971 to provide that if a law has been enacted to implement the policy contained in article 39(b) and (c), such law shall be immune from challenge as violative of articles 14, 19 and 31 of the Constitution. As already mentioned earlier, article 31 has since been omitted.

- Privy purses and privileges of the rulers have been abolished by the Constitution (Twenty-sixth Amendment) Act, 1971.

- Various State Acts enacted for the purpose of land reforms and other statute have been put in the Ninth Schedule with a view to giving them immunity from challenge in the courts on the ground of infringement of Fundamental Rights. The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993 has also been included in the Ninth Schedule.

- Preamble of the Constitution was amended to expressly indicate that India is a "Socialist" and "Secular" Democratic Republic.

- Part IVA has been inserted by the Constitution (Forty-second Amendment) Act, 1976 to enumerate "Fundamental Duties" of every citizen. A new Part XIVA was inserted in the Constitution by the same Amendment to facilitate the establishment of administrative and other tribunals. In clause (2) of article 323B, a sub-clause has been inserted with a view to enabling the appropriate Legislature, by law, to provide for adjudication or trial of disputes relating to rent, its regulation and control and tenancy issues, including the right, title and interest of landlords and tenants, by tribunals.

- The Constitution (Forty-second Amendment) Act, 1976 also sought to put Constitutional Amendments beyond the pale of judicial review by amending article 368. Section 55 thereof also declared that "there shall be no limitation whatsoever on the constituent power of Parliament" to amend any provision of the Constitution by way of addition, variation or repeal. However, the section was declared invalid by the Supreme Court in *Minerva Mills Ltd. and Others v. Union of India and Others* [(1980) 2 SCC 59].

- Clause (4A) has been added in article 16 by the Constitution (Seventy-seventh) Amendment Act, 1995 to enable the State to make provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. Clause (4A) of article 16 was further amended with effect from 17 June 1995 by the Constitution (Eighty-fifth Amendment) Act, 2001. The amendment substitutes the words "in matters of promotion to any class" by the words "in matters of promotion, with consequential seniority, to any class". This amendment was made to negate the effect of judgments of the Supreme Court in cases of *Virpal Singh Chauhan* [(1995) 6 SCC 684] and *Ajit Singh* No. 1, [AIR 1996 SC 1189] according to which Government servants belonging to the Scheduled Castes and Scheduled Tribes could not get seniority consequent upon their promotion to the next higher grade by virtue of rule of reservation.

- By the Constitution (Eighty-first Amendment) Act, 2000, article 16 has been further amended to insert clause (4B) to provide that nothing in the said article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause 4(A) as a separate class of vacancies to be filled up in any succeeding year or years. Further, such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation in total number of vacancies of that year. This provision has been made to overcome the decision in *Indra Sawhney v. Union of India* [AIR 1993 SC 477].

- The Constitution (Eighty-second Amendment) Act, 2000 adds proviso at the end of article 335 for an enabling provision being made in favour of members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State. The amendment has been made to nullify the effect of Apex Court's ruling in *S. Vinod Kumar v. Union of India* [(1996) 6 SCC 580].

B. Amendments Pertaining to Centre-State Relations

- Special provisions have been inserted in the Constitution for the governance of Nagaland, Manipur, Mizoram, Arunachal Pradesh, Sikkim, etc. In some cases, provision was made to protect social practices and customary laws of the people, e.g. Mizos (*vide* article 371G).
- Special provisions were made for the State of Andhra Pradesh to satisfy the aspirations of the people of Telangana region.
- Amendments have been made to ensure that the members of the Scheduled Tribes do not fail to secure a minimal representation in predominantly tribal areas of North East.
- Certain amendments were made in the part relating to emergency provisions, namely, Part XVIII of the Constitution for the purpose of enhancing normal period of President's Proclamation with respect to the State of Punjab and for curbing the terrorist activities in that State more effectively. Some of these were, however, omitted by later amendments.
- Certain entries in the State List in the Seventh Schedule which were considered vital for the country as a whole have been shifted to the Concurrent List so that activities in those areas could be properly monitored at the national level (e.g. education, forests, protection of wild animals and birds, weights and measures except establishment of standards, etc.)
- Special provisions have been added with respect to Delhi for the purpose of constituting the Legislative Assembly and making other allied provisions for the National Capital Territory of Delhi.
- It has been explained through a constitutional amendment that elected members of Legislative Assemblies of Delhi and Pondicherry would form part of the electoral college for electing the President of India.
- Clause 3(b) was inserted in article 332 to give effect to the Memorandum of Settlement (known as TNV Accord) with a view to satisfying the aspirations of tribals of Tripura for a greater share in the governance of the State. Increased reservation of seats was thus provided for tribals in the Tripura Legislative Assembly.

- The Constitution (Seventy-third Amendment) Act, 1992 added Part IX relating to "Panchayats" and the Eleventh Schedule.
- The Constitution (Seventy-fourth Amendment) Act, 1992 inserted Part IXA concerning the "Municipalities" and the Twelfth Schedule.
- By the Constitution (Eightieth Amendment) Act, 2000, clauses (1) and (2) of article 269, and article 270 as a whole have been substituted. Article 272 of the Constitution has been omitted. The amendments made in the said articles were based on the report of the Tenth Finance Commission. These amendments, *inter alia,* provide for an alternative scheme for assigning certain percentage to the States out of the total proceeds of all Union taxes and duties (excluding cesses and surcharges). This is in contrast to the present scheme of sharing of Union taxes between the Union and the States whereby the proceeds of personal income tax and Union excise duty are shared between the Union and the States. One important modification in the scheme, as suggested by the Tenth Finance Commission, is that the percentage of States' share in the total proceeds of Union taxes may be reviewed by successive Finance Commissions instead of freezing it for fifteen years as suggested by Tenth Finance Commission. The alternative scheme for distribution of the total proceeds of all Union taxes and duties between the Union and the States was made effective from 1 April 1996.
- Clause (3A) has been added in article 243M by the Constitution (Eighty-third Amendment) Act, 2000 providing that nothing in article 243D relating to reservation of seats for the Scheduled Castes shall apply to the State of Arunachal Pradesh.

C. Miscellaneous

- Tenth Schedule has been inserted in the Constitution with a view to providing for disqualification from membership of either House of Parliament or Legislature of a State on the ground of defection.
- The voting age for elections to the House of the People and to the Legislative Assemblies of States has been lowered from 21 to 18 years.
- A National Commission for the Scheduled Castes and Scheduled Tribes has been constituted.

- Retirement age of High Court judges was raised. Salaries of Supreme Court and High Court judges have also been raised.

- The civil appellate jurisdiction of the Supreme Court was redefined so that an appeal does not lie on the basis of valuation but on merits of the case (that is, whether an important question of law was involved).

- Article 297 was amended to enlarge the scope of India's sovereign rights over sea wealth keeping in view international developments relating to Law of the Sea.

- Provision was made to empower the President to publish under his authority the translation of the Constitution in Hindi.

- Konkani, Manipuri and Nepali have been added as official languages by amending the Eighth Schedule.

- Article 334 of the Constitution relating to the reservation of seats for the Scheduled Castes and the Scheduled Tribes and the representation of Anglo-Indian community by nomination in the Lok Sabha and Legislative Assemblies of the States has been amended from time to time and the latest amendment provides for its continuation for a period of sixty years from the date of commencement of the Constitution.

- On 27th November, 2000, the Constitution (Ninety-first Amendment) Bill, 2000 was introduced in the Lok Sabha. The Bill which sought to freeze readjustment of seats for Lok Sabha and State Legislative Assemblies based on recent census till 2026 and provide for delimitation of seats by rationalising the territorial constituencies on the basis of figures of 1991 census, including reallocation and readjustment of seats for the Scheduled Castes and Scheduled Tribes (without increasing the number of general seats), was passed by both the Houses of Parliament (Lok Sabha and Rajya Sabha) on 21 and 23 August, 2001 respectively. The said Bill was ratified by the State Legislatures as required by Article 368 of the Constitution and has received assent of the President. The said legislation is called the Constitution (Eighty-fourth) Amendment Act, 2002. A separate legislation for constituting a body for delimitation of constituencies will have to be enacted in pursuance of this amendment.

Bills Pending in the Parliament

The Bills pending in the Houses of Parliament are indicated below:

D. Bills Pending in Rajya Sabha

Some of the Bills which are pending in the Rajya Sabha are:

- The Constitution (Sixty-first Amendment) Bill, 1988 seeks to shift entry 33 relating to sports from the State List to the Concurrent List. The Bill was introduced on 24 November 1988.
- The Constitution (Seventy-ninth Amendment) Bill, 1992, seeks to insert new Directive Principles with a view to promoting population control and small family norm. The Bill, which was introduced on 22 December 1992 seeks to amend articles 102 and 191 and to introduce a new schedule called the Thirteenth Schedule providing for disqualification on the ground of violation of the small family norm. The Bill was referred to the Departmentally-related Parliamentary Standing Committee on Human Resource Development which presented its report on 22 March 1995.
- The Constitution (Eighty-seventh Amendment) Bill, 1999 was introduced on 17 December 1999 proposing amendment to article 243C of the Constitution by inserting clause 2A. At present, the State Legislatures have the power to determine by law, the manner of election of Chairpersons at village level alone. This power is lacking in respect of elections to Chairpersons of the Panchayats at the intermediate and the district level. The amendment, *inter alia,* confers upon the Legislatures of the States, the power to make necessary provision by law in this regard.
- The Constitution (Eighty-third Amendment) Bill, 1997 was introduced on 28 July 1997 which sought to introduce right to education by inserting new article 21A and by making certain other changes in the relevant provisions of the Constitution. The Departmentally-related Parliamentary Standing Committee on Human Resource Development presented its report on this Bill on 24 November 1997. This Bill has since been withdrawn in the Winter Session of Parliament during 2001 and in its place, the Constitution (Ninety-third Amendment) Bill, 2001 was introduced in the Lok Sabha on 26 November 2001 and has since been passed by that House on 28 November 2001. This Bill, which is

now pending before the Rajya Sabha, seeks to make following changes in the Constitution:

(i) By inserting article 21A in Part III on Fundamental Rights, the Bill provides for free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

(ii) Article 45 of the Constitution would substitute the existing Directive Principle of State Policy by providing that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. The Directive Principle as it now stands provides for free compulsory education to all children upto the age of fourteen years.

(iii) A clause is sought to be inserted in article 51A relating to Fundamental Duties to make a provision that a parent or guardian shall provide opportunities for education to his child or ward between the age of six and fourteen years.

E. Bill Pending in Lok Sabha

The Constitution (Eighty-fifth Amendment) Bill, 1999 was introduced in the Lok Sabha on 23 December 1999 for making reservation of not less than one-third of the total number of seats for women in the House of the People, the Legislative Assemblies of the States and the Legislative Assembly of the National Capital Territory of Delhi for a period of fifteen years. The Statement of Objects and Reasons for this Bill indicates that this amendment has been proposed for "political empowerment of women" which, according to this Statement, is "rightly perceived as a powerful and indispensable tool for uplift of women and eliminating gender inequality and discrimination". The Statement also notes that as a first step to achieve this objective, reservation for women in Panchayats and Municipalities was provided by insertion of articles 243D and 243T in the Constitution.

ANNEXURE

TABLE SHOWING THE CONSTITUTION AMENDMENT BILLS WHICH HAVE LAPSED WITH ARTICLE(S)/SCHEDULE OF THE CONSTITUTION SOUGHT TO BE AMENDED

Sl.No.	Number of the Constitution Amendment Bill	When lapsed	Article
1	2	3	4
1.	The Constitution (Fifth Amendment) Bill, 1955	On dissolution of the First Lok Sabha	Articles 3, 100, 101, 103, 148, 189, 190, 192, 276, 311, 316 and 319
2.	The Constitution (Eighteenth Amendment) Bill, 1994	On dissolution of the Fifth Lok Sabha	Article 359 (2)
3.	The Constitution (Twenty-ninth Amendment) Bill, 1972.	On dissolution of the Fifth Lok Sabha	Article 31A (1)
4.	The Constitution (Thirty-second Amendment) Bill, 1973.	On dissolution of the Fifth Lok Sabha	Articles 75(5), 102(2)(3)(4), 164(4), 190, 191 and 192
5.	The Constitution (Forty-first Amendment) Bill, 1975 Introduced in Rajya Sabha.	On dissolution of the Fifth Lok Sabha	Article 361
6.	The Constitution (Forty-third Amendment) Bill, 1977.	On dissolution of the Sixth Lok Sabha	Omission of articles 31D and 329A. Amendment of articles 83, 172 and 329
7.	The Constitution (Forty-seventh Amendment) Bill, 1978.	On dissolution of the Sixth Lok Sabha	Aticle 239A
8.	The Constitution (Forty-ninth Amendment) Bill, 1979.	On dissolution of the Sixth Lok Sabha	Articles 269, 286, 366 (29A) and insertion of Entry 92B in List I of the Seventh Schedule.
9.	The Constitution (Fiftieth Amendment) Bill, 1979.	On dissolution of the Sixth Lok Sabha	Insertion of Entry 17C in List III of the Seventh Schedule
10.	The Constitution (Sixty-third Amendment) Bill, 1989.	On dissolution of the Eighth Lok Sabha	Article 332 (3B)
11.	The Constitution (Sixty-seventh Amendment) Bill, 1990.	On dissolution of the Ninth Lok Sabha	Articles 124(2), 217, 222 and 231

1	2	3	4
12.	The Constitution (Sixty-ninth Amendment) Bill, 1990.	On dissolution of the Ninth Lok Sabha	Article 332(3B)
13.	The Constitution (Seventy-second Amendment) Bill, 1990.	On dissolution of the Ninth Lok Sabha	Article 371 J and amendment of the First Schedule and Fourth Schedule
14.	The Constitution (Seventy-third Amendment) Bill, 1990.	On dissolution of the Ninth Lok Sabha	Amendment of the Ninth Schedule
15.	The Constitution (Seventy-fourth Amendment) Bill, 1990.	On dissolution of the Ninth Lok Sabha	
16.	The Constitution (Eightieth Amendment) Bill, 1993.	On dissolution of the Tenth Lok Sabha	Articles 28A, 35A, 102, 191 and 226
17.	The Constitution (Eighty-fourth Amendment) Bill, 1994.	On dissolution of the Tenth Lok Sabha	Articles 81, 82, 170
18.	The Constitution (Eightieth Amendment) Bill, 1996.	On dissolution of the Eleventh Lok Sabha	Articles 81, 82, 170
19.	The Constitution (Eighty-first Amendment) Bill, 1996.	On dissolution of the Eleventh Lok Sabha	Articles 330A and 332A
20.	The Constitution (Eighty-fourth Amendment) Bill, 1998.	On dissolution of the Twelfth Lok Sabha	Articles 239AA, 330A, 331, 332A, 333 and 334A.
21.	The Constitution (Eighty-fifth Amendment) Bill, 1998.	On dissolution of the Twelfth Lok Sabha	Articles 269, 270, 271 and 272

PART III : PARLIAMENTARY DEMOCRACY—PROBLEMS AND PROSPECTS

PARLIAMENTARY DEMOCRACY IN INDIA—SOME THOUGHTS

Buddhadeb Bhattacharjee

Parliament in India is an august institution with the responsibility to act in tune with the democratic aspirations of the people of our country. Despite some weaknesses and inadequacies, democracy has come to stay in our country and the involvement of the people in the functioning of the democratic bodies has grown over the years.

In our Parliament, legislations of historic importance have been made to safeguard and sustain the rights and interests of the people and thus this apex institution has carved out a niche for itself in the recent history of the Third World. But we must be on our guard against threats posed by various forces that stand in the way of India's growth as a stable and vibrant democracy. At times, we are anguished over the attempts that tend to disrupt the proceedings of Parliament and other legislative institutions. It is imperative on the part of the people's representatives to discharge their duties in a manner consistent with laws and rules, conventions and procedures, to uphold the decency and the decorum of these fora.

Democracy thrives on effective fulfilment of roles by both the Treasury Benches and the Opposition parties. Their functions are complementary to each other for the purpose of protecting, preserving and promoting the national interest. Any distortion or aberration in the working of the parliamentary system harms the cause of democracy. Authoritarian tendencies and recourse to draconian legislations negate the very principles of democracy. The sad events of the emergency and their sadder impact on the Indian Parliament must be regarded as unfortunate blemishes of the past. We must get rid of all such causes of concern for all times to come. At present, the fundamentalists and terrorists are carrying on a sinister design against the democratic institutions, including our Parliament itself. We must counter this menace with grit and determination.

Political opportunism, economic offences and social crime have assumed grave proportions. To confront and overcome these dangerous trends, the right political culture, among other remedial measures, has to be developed with assiduous care. Morality in public life and sound parliamentary practices must coalesce to combat the evils that endanger the working of a political democracy.

People's representatives should accord priority to ideology and principles, and display a high sense of responsibility. Unethical defections by some legislators and their utter disregard for public accountability are anathema to democratic values and the worst offences against parliamentary system. Corruption in certain quarters and the nexus between the politicians and the criminals are matters of serious concern. What is needed is a set of measures involving electoral reforms, debarring candidates with criminal antecedents from contesting elections, and finally, enactment of the Lokpal Bill, both at the Centre and in the States. The perversions that the Indian democracy has experienced in the course of the last fifty years must be corrected with collective efforts, guided by mature judgment and a spirit of commitment to the democratic values.

The areas that call for devoted endeavours by the people's representatives relate to implementation of land reform measures, balanced development of industrial and agricultural sectors, environmental protection and upgradation, spread of literacy and education, and creation of more and more opportunities for assertion of civil, political, social, economic and cultural rights of the people. Democratic movements and legislative measures based on well-defined objectives and priorities are of paramount importance for the health and growth of democracy, the cherished ideal of the people of India. The elected representatives of the people from the Parliament down to the Panchayat bodies are the active promoters of our democratic system. It is a system which is capable of providing relief to the people and mitigating their hardship.

It should be our endeavour to uphold the majesty of parliamentary institutions, to work for ensuring social and economic justice and to enhance the glory of the secular, democratic fabric of the country. The banner of Indian democracy has to be held high with our commitment to just action.

FIVE DECADES OF PARLIAMENTARY DEMOCRACY

Ramesh Chennithala

Introduction

Five decades is long enough period for making an honest and objective appraisal of our achievements and failures in the task of strengthening the democratic system. We can consider ourselves the most authentic people who can make such an appraisal. At the same time, it may be a little difficult to be absolutely objective in appraising, in particular, our failures as we are too much a part of the system. However, within these constraints, I shall try to be as objective as I can be.

After long years of freedom struggle which involved every part and region of the country, when we became free, the great leaders who led the struggle decided that parliamentary democracy was the most suitable system for India. Those wise men had a deeper understanding of India's strengths and weaknesses and so they chose parliamentary system of Government. They realised that India with its bewildering diversity can only be held together under the parliamentary system which ensures sufficient space for all shades of political opinion. In my view, the most important feature of a parliamentary system is its ability to accommodate divergent views and forge consensus on fundamental issues.

The Indian National Congress which had the privilege of leading the national struggle for freedom ruled the country continuously for several decades on the strength of its support from almost all social groups in the country. The masses were with the Congress, which is why the Congress Government at the Centre under the leadership of Pandit Jawaharlal Nehru could implement progressive legislative and other measures which had far-reaching impact on the Indian society at different levels. The Hindu Marriage Act, the Hindu Succession Act, etc. are landmark legislations which revolutionised the Indian society by giving women the rights which were denied to them for millennia. Similarly, the initiatives in land reforms could generate a great wave of interest in the re-distribution of land so that the tiller gets a share in the land he tills. All these measures of great socio-economic significance were initiated in the face of resistance from powerful vested interests. However, it must be remembered that a majority of the members of Parliament who supported these measures were from the upper classes. Thus, Parliament became the driving force of socio-economic revolution in India.

Change in the Political Behaviour of the People

India is a political laboratory. The last 50 years saw significant changes in the political behaviour of our people. We started out with the predominance of one party, namely, the Indian National Congress which represented the essence of democratic consensus in India. The Congress with its democratic traditions defined the fundamental issues of the nation in terms of this consensus. The entire political system in India operated on the basis of this consensus as this was the core of Indian democracy. However, with the Congress Party losing this position of pre-eminence, Indian politics moved on to a different track. These developments imparted a new dynamics into the Indian politics. The Indian society's apparent cohesion and harmony gave way and the contradictions within it came to the surface. New social equations began to be formed. Naturally, the old consensus came under severe strain. I cannot say whether such changes are inevitable in our march towards the future. But certain aspects of these changes are disturbing.

The freedom movement resulted in the submersion of caste identities of our people. In the formative years of the Republic when the industrial-scientific foundation was laid, caste did not become a factor. But now things are very very different. Caste is the most powerful motivating factor; caste shapes up the rural power structure. Ultimately caste decides who should wield power in the States as well as in Delhi. Although caste has always been factored into political calculations, never before has it become the most determinative factor in Indian politics as now.

Decline in the Quality of Political Discourse

This change in the Indian political scenario has taken its toll on the quality of the political discourse in the country. I think we must be honest enough to admit that there is a perceptible decline in the quality of debate in the Legislative Bodies in the country. There is indeed a paradigm shift. Orderly debates and discussion have given way to fisticuffs. No one has faith in the rules of the game. No one has the patience to listen to the other. It seems we have started to enjoy our very "physical" performance on the floor of the House.

Criminalisation of Indian Politics

Another disturbing aspect of change is the growing criminalisation of Indian politics. The political class has not yet taken it seriously. With each election, the number of people with criminal background who enter the Legislative Bodies is increasing. We have made no serious attempt so far to curb this. It is perhaps a unique feature of Indian democracy and the legal system being followed here that criminals and gangsters can enter Legislative Bodies without much difficulty, whereas in the normal course it is very difficult for an academic to do so. In fact I tried to initiate a discussion on this issue by introducing a Private Members' Bill in the Lok Sabha which provides that a person who has been charge-sheeted by a court should stand disqualified for standing for election. This bill has not yet come up for discussion. The basic problem is that no one wants to take any initiative in preventing the criminals from entering the Legislatures. It is rather puzzling that there is no serious discussion taking place in any major political party on this issue. The sight of members of the Legislatures being taken straight to the jails after attending the sittings of the House, certainly does not speak well for Indian democracy.

Democracy and Indians

However, it must be said to the credit of the Indian people that they do not accept any system other than democracy. Indian democracy is by no means perfect, perhaps it can never be. Nevertheless, people have faith in the freedom it ensures, the right it gives to them to choose their representatives and the general atmosphere of openness it sustains. India's GDP has been lower than that of China. While China has gone far ahead of us and has become a world power, India remains a mere regional power. But freedom is more than GDP and where there is no freedom, life is not worth living. India has the geinus for sustaining democracy in some form or the other despite the weakening of the national consensus and the sharpening of the structural contradictions within the Indian society.

Nevertheless, these realities of the Indian situations would be recognised. Thereafter, we can begin the search for an honest solution to the malaise we are facing. Today, religious issues are coming to the centre stage and clouding our perspectives. A serious political exercise like an election is being trivialised by the cine actors occupying the centre of election platform. At this rate, before long a *Samba* dance will have to be performed on every election platform to sustain the interest of the people in the election. In fact, of late elections have become non-political in the sense that serious political issues are not put on the agenda. People are not called upon to decide such issues any more. In any case, the politicians are losing faith in themselves. That, I think, is why they feel it necessary to have a proper "introduction" from the cine artists when they appear before the people.

Conclusion

This is certainly not the direction in which Indian democracy should move. We must stop this pathetic self-deluding exercise and rediscover genuine politics. Disinvestment of morality and ethics can be the political agenda of a party of fly-by-night political operators. At any rate it cannot be the agenda of the nation. A serious political movement imbued with a vision which can transcend the divisive barriers of caste, creed and class is necessary to restore the national consensus and synthesize the social contradictions. For this to be achieved, we must have thinking minds. India has been overtaken by mediocrity. We must cease to be mediocre. India's redemption lies in there.

PARLIAMENTARY DEMOCRACY IN INDIA—AN APPRAISAL

Bali Ram Bhagat

Introduction

Today, parliamentary democracy in India in its modern sense is fifty-five years old. During these more than five decades, India has justifiably earned encomiums from far and wide as the world's largest working parliamentary democracy. However, in recent times particularly, there has been a widespread concern over the direction our political system is taking. Citizens across the country have been alarmed at the increasingly large number of reports appearing regularly on the alleged criminalisation of politics, lack of probity among the political leadership and all-pervading corruption. More and more people are approaching courts with Public Interest Litigation (PILs) relating to reported instances of high-handedness by those in positions of power.

Strengthening Democracy and Constitution

We need to look into some of the Constitutional and other dilemmas which we are facing today. It is imperative to strengthen the national fabric by resorting to affirmative action in respect of the minorities. Also, the empowerment of women, SCs, STs and OBCs warrant urgent attention in the context of encouraging greater partnership between men and women in decision-making bodies. The concept of secularism, as enshrined in the Constitution and in all its manifestations, should develop as a political ideal and not as a sectarian precept. We cannot give in to the divisive forces based on caste, community, religion and language, rather our efforts should be to use our democratic commitment to address various issues constructively as the Constitution enjoins upon ourselves.

Strengthening Panchayati Raj Institutions

Panchayati Raj Institutions have to be strengthened with all possible assistance. A large number of subjects relating to agriculture, health, education, rural industries, urban development, etc. have been listed for being vested in the three-tier Panchayati Raj Institutions. What is important, however, is the basic willingness on the part of those in whose hands power is now vested to share it down the hierarchy of the local self-government. We have still not got out of our colonial mind-set of not being willing to share power. This was evident in the meetings of the Chief Ministers when they were unable to come to a decision on the pace of *de facto* transfer of power and responsibility. Even if the political decision makers are willing to truly empower the local bodies and peoples' institutions, the entrenched Establishment of the day is offering very stiff resistance to the process. We should make more sincere efforts to spread the principles of parliamentary democracy to every level of Government in the country from village panchayats and the zilla parishads and municipalities to the State Legislatures and then to the Parliament. Elections at every level is an educative process to the voters and the voted and these lower echelons of democracy could be a good training ground for parliamentarians.

Importance of Electoral Reforms

Democracy as a form of Government will survive if elections to choose representatives are held periodically in a free, fair and equitable manner. However, during the last 50 years, despicable developments have taken place in the country which have reduced elections almost to a farce. For winning elections illegal and immoral methods are resorted to. Money power, muscle power, corrupt and unfair practices are increasingly used with impunity. Several other practices and improprieties of political parties in the collection and use of funds, bribery and misuse of authority plague our system. The cry for comprehensive electoral reforms has reached its crescendo.

A representative Government presupposes the existence of political parties but our party system is also in a shambles. We have a multiplicity of parties but hardly any of them conform to the democratic principles. They do not account for the assets and for the sources and use of funds. Their accounts are not audited nor do they file return of income in *prima facie* violation of the statutory provisions of the Income Tax Act. It is disgraceful that ceilings on election expenditure fixed by law are honoured more in breach than in observance. Today, election expenditure for a parliamentary constituency goes above a crore of rupees and for the State Assembly half that amount. This is clearly a shocking method of depriving an honest candidate from entering the Legislature. The fact that much of the amount is raised through black money has led to another but more serious development. The nexus of elections with mafia and criminals has led to criminal elements entering the holy shrines of democracy—the Legislatures—in growing numbers. Promoting undesirable elements has become a feature of Indian politics. The Law Commission's report on electoral reforms (1999) says that those chargesheeted by a court should be disqualified from contesting elections. This solution is not perfect but it merits consideration as a deterrent in the face of the rising trend of criminalisation of politics.

Evil of Defections

Law may permit certain things which though constitutionally valid are nevertheless not sound as a constitutional practice. Take the case of the Anti-Defection Law. Even after the Anti-Defection Act (1985), both the law and the Constitution permit defection within limits. Many Governments have been toppled by unprincipled defections. Defection from a party is an affront to the electorate that had returned a member. Whether one member or one-third of the members defect from the party, it is defection all the same. Before it makes a mockery of the parliamentary functioning all defections should automatically lead to the vacation of seat by the defecting legislators as suggested by several committees set up for the purpose of electoral reforms. Good constitutional practices enjoin upon the political parties and their leaders to ensure that chargesheeted persons are not permitted to stand for elections on their party ticket.

Democracy and Good Governance

The test case for a democratic society today, therefore, no longer is confined to a consideration of whether that society adopts commonly understood democratic procedures in the election or replacement of Government but how seriously it applies essential democratic principles to day-to-day governance of the society. In this consideration, the processes and procedures are relegated to the background and the degree of responsibility, accountability and transparency a society displays is taken to be the yardstick for measuring the democratic content in that society. In fact, most of the widely accepted elements of a democratic society like elections, political freedoms, fundamental human rights, welfare, etc. are the necessary off-shoots of a system of Government based on responsibility, accountability and transparency.

Today, in societies where democracy is well-entrenched, peoples' concern is not about institutional arrangement *per se* but about what these institutions deliver. The emphasis has now shifted from form to substance, whereby certain development-oriented concepts of universal validity are used to test the democratic content in any society. Good governance is the *raison d'etre* of democracy. In fact, there is a tendency to see good governance and democracy as inseparable concepts. This implies the working of democracy not just as a form of Government but as a way of governance and as a way of life. Developments across the world in recent years have also proved that there is a close inter-relationship between democracy and economic development. Where Government is open and accountable, undemocratic and unhealthy policies can be identified and publicly debated before they become chronic. The use of public resources can be effectively monitored and Government policies can be made responsible to public need.

Causes of Political Instability

A matter of great concern to the parliamentary system today relates to the issue of political instability. The failure to provide stable Governments capable of meeting popular aspirations has sometimes even threatened the very existence of the democratic system in several societies. Fragmentation of political parties around narrow personal and divisive issues rather than their polarisation around larger national issues is one of the reasons contributing to political instability. Coalition Governments, which are essentially short-lived, have emerged on the parliamentary horizon. Coalition Governments to be successful, should have a common minimum programme which should reflect the highest common measures of agreement on basic policy issues between parties in partnership. Leaders of political parties and other agencies associated with the functioning of democracy, therefore, have to strive hard to evolve mechanisms for ensuring stable Government.

Reinforcing Democratic Institutions

For the uninterrupted and successful functioning of democracy, it is also important to strengthen all other institutions that are fundamental to a democratic polity. These include a free media, the Judiciary, institutions like the Ombudsman, mechanisms meant to ensure transparency in the functioning of Government like the Ethics Committees, mechanisms directed towards ensuring public accountability, etc. It is also important for the international community to make efforts to identify the factors threatening democratic experiments in several developing societies and demonstrate the willingness to address them, more particularly issues relating to development. Threats from common sources like terrorism, religious fundamentalism and from aggressive or radical ideologies also need to be countered effectively.

Conclusion

We have to ensure at any cost that the Rule of Law prevails through the length and breadth of the nation. Aristotle said 'where laws are not supreme, there demagogues spring up'. Similar feelings were echoed by Gandhiji also when he said 'my notion of democracy is that under it the weakest should have the same opportunity as the strongest'. Dialogue is an essential prerequisite for a functioning democracy and there is no higher or better forum than Parliament for this role. Tolerance is a basic attribute of a democratic society and intolerance is the very antithesis of democracy. In order to understand our parliamentary polity, objectively, it is important to keep in mind that a democratic society is particularly dynamic and that it is constantly evolving and keeps on changing to suit the changing needs, newer aspirations and hopes of the people and that is its greatest advantage. If we attempt a deeper analysis of the evolution of our democratic institutions, the fast changing socio-economic and political scenario and the new under-currents of politics in the country, we will notice that successive Parliaments have reflected a deeper commitment of our people to parliamentary democracy as also the increasing maturity of the Indian voters in responding to the political situation as they emerge before them.

WORKING OF PARLIAMENTARY DEMOCRACY

Ch. Prem Singh

Introduction

When India became independent, the founding fathers of our Constitution, though they had other choices, adopted the parliamentary system for the governance of the country. The adoption of parliamentary system for the country was preceded by detailed discussions in the Constituent Assembly over a long period of time by the country's best minds. This system was preferred because it was felt to be more suitable to our culture, genius and ethos. Moreover, we also had some experience of this system during the British rule. Even in our ancient literature like the *Rig Veda*, there is mention of the institutions of *Sabha* and *Samiti* existing during that period. These institutions were somewhat similar to the popular representative institutions which exist in the present day India. The *Sabhas* and *Samitis* used to take collective decisions, almost in the same manner in which our elected Legislatures arrive at decisions, after deliberations and debate. Keeping all the aforesaid factors in view, our Constitution makers came to the conclusion that parliamentary democracy would be the best suited for the country.

Our Achievements

Our system is more than five decades old now. We can legitimately take pride in being the largest democracy in the world. We have elected set-ups right from Parliament down to the Panchayat level. Notwithstanding numerous problems and challenges that this system has had to encounter, it has, on the whole, stood the test of time. During this period, the country witnessed natural calamities, droughts, devastating floods, earthquakes, religious and caste riots, wars—that too at least on four occasions—and brutal assassination of a Prime Minister and a former Prime Minister. On a number of occasions, the Indian electorate, by putting a stamp on a piece of paper in the periodic elections, changed the Governments at the Centre and in the States and the transition in all these cases was very smooth. All this amply demonstrates the resilience and vitality of our democracy.

Challenges before Us

Imperative of Discipline and Decorum

But, of late, our Parliament and State Legislatures are encountering certain serious problems. For days together, the sittings of the two Houses of Parliament and those of the State Legislatures have to be adjourned because of pandemonium and disorders. There are often slogan shoutings, *dharnas,* breaking of House furniture, gheraoing of the Presiding Officers and at times even scenes of violence in our Legislative Chambers. Discipline and decorum are fast becoming a casualty. All this not only lowers the esteem of the members individually but also that of the representative institutions, leading ultimately to the erosion of people's faith in the system itself.

Need for more Sittings

Another serious malaise is the increasing tendency on the part of the Governments to shy away from the elected Houses of the Legislatures and attempt to escape from legislative accountability. The number of meetings of the Legislatures in various States has been consistently coming down. The State Governments follow such a course of action because of the absence of Constitutional obligations on them to hold any prescribed number of sittings of the House. According to an information compiled by the Lok Sabha Secretariat, during the period 1993-1997, there were only three State Legislatures which held more than 50 sittings in a year. As many as 16 State Legislatures held less than 30 sittings in a year. Six of these States held only 11 to 20 sittings and this figure, everyone would agree, is abysmally low. Interestingly, the number of sittings held by two of the State Legislatures did not even cross the double digit mark.

Standard of Debates

The falling standard of debates in our Legislatures is another cause for concern. Immediately after Independence, the standard of debate in Parliament was of a very high order. This could be attributed to the fact that we had, during the early years of Independence, a large number of members who were excellent debaters, who were men of academic excellence and drawn from the category of professionals—lawyers, doctors, educationists, scientists, economists, and so on. Many of the members had also taken active part in the freedom struggle and, therefore, had convictions of their own. On the contrary, we have today a majority of members who represent the common people and belong to the grass-roots. This could be one reason for the change that we see in the complexion of our representative institutions.

Legislative Business

As a Presiding Officer, I have observed that very little time of the House is devoted to the legislative business. While in the initial years of Independence nearly 1/5th of the floor time of Lok Sabha used to be devoted to the discussion on and passing of bills and transaction of other legislative business, it has drastically come down now. In the State Legislatures, the position is still worse. Important legislations, which not only affect the present generation but also the posterity, get passed in no time. Very few members take the legislative business seriously and make their contribution towards the contents and contours of the emerging legislation.

Our system is facing yet another problem of a very serious nature. The respectability and credibility of politicians and law-makers have considerably gone down in the eyes of the common man. For this, of course, the people in public life are themselves to be blamed. The masses form their opinion on the basis of what they actually see, read and hear.

With a view to checking frequent adjournments of the Houses due to pandemonium and disorder and finding ways and means to maintain discipline and decorum in Parliament and State Legislatures, an All-India Conference was held in November 2001 in Parliament House at the initiative of the Speaker, Lok Sabha, Shri G.M.C. Balayogi. The Conference, attended by Presiding Officers, Chief Ministers, Ministers of Parliamentary Affairs, Leaders of Parties and Whips discussed and deliberated the issue at length. At the end of the Conference, a resolution encompassing a code of conduct for legislators was unanimously adopted which aimed at preserving and enhancing the prestige of Parliament and State Legislatures. If the spirit of the Resolution is followed and observed by all with sincerity, it will go a long way in preserving, nourishing and strengthening parliamentary democracy which is the very essence of our polity.

Recently, our system faced the most serious challenge since Independence when on 13 December, 2001, some terrorists attacked the Parliament House—the very heart of Indian democracy. With the sacrifices of nine security personnel, the bastion of Indian democracy survived and all the five terrorists were shot dead. By attacking the Indian Parliament, the terrorists and their collaborators were trying to undermine our very system of governance, nay, our way of life. That being so, it is essential that we strengthen our resolve to safeguard our democratic institutions and in this onerous task, the representatives of the people have a very crucial role to play.

FEDERALISM, DIVERSITY AND GLOBALISATION—CONFLICTING PULLS AND AN INDIAN SOLUTION

Prem Shankar Jha

Introduction

Since the end of the Cold War, the attention of scholars and Governments has focused increasingly on two developments that have begun to alter radically the world we live in. The first is globalisation — the emergence of a single, increasingly integrated global society. The second is the resurgence of ethnicity. The first is pushing the nations of the world inexorably closer together. The second is threatening to pull established nations apart. Together they are beginning to pull the world, as we have known it for the past two hundred years, completely out of shape. The target of both is the nation state. Since the nation state will not go out quietly, both developments are loaded with the potential for violence. Indeed the violence caused by the resurgence of ethnicity is already very much in evidence. The potential for violence contained in the process of globalisation, and its assault on the nation state, has still to be fully appreciated.

Technology and Emergence of Global Market

Ironically, both are children of the same "revolution", the freeing of Technology from the shackles of Capital. The emergence of technology (as distinct from capital) as the key determinant of social, economic and political relations can be traced back to the rise of the monopoly firm in the last quarter of the 19th century and to what Schumpeter called the 'institutionalization of innovation'. The resources, the monopolies could devote to applied research moved technological innovation from the factory floor to the research laboratory and the pilot plant. Technology thus acquired a life of its own. And as the fruits of technology multiplied, the pace of change accelerated.[1]

The harnessing of technology to production requires competition. Only the spur of competition makes investors replace older generations of equipment with newer, more efficient ones at the earliest opportunity. It is therefore not surprising that the countries with competitive economies have forged ahead while those that shunned competition and relied on one or other form of centrally planned, command economic systems, fell by the wayside.

Technology is the force behind the emergence of a global market. Over the past century and a half it has not only reduced transport and communications costs to a minute fraction of what they used to be, but has literally collapsed distance and time. This was the essential prerequisite for the emergence of the globally integrated production, for it made possible hands-on management of production at a large number of remote production centres from a single global or a few regional headquarters. The rapid growth of global integration has been reflected in a three to four per cent faster rate of growth of world trade than of world GNP in the last half century. The ratio of trade to GNP has gone up from somewhere around 15 per cent in 1950 to around 45 per cent today. Fully one-third of world trade is made up of inter-branch sales within transnationals.

Till as recently as twelve years ago, the global marketplace was, in terms of geographical area, still quite small. In all perhaps two dozen countries had open, market driven economic systems. But the collapse of the Socialist economies and the abandonment of the command economy in all but one or two developing countries has added another 100-odd countries to the list. Today the world is moving at breakneck speed towards becoming a single integrated global market.

Globalization and Sovereignty of Nation States

Global integration has brought immense pressure to bear on the sovereignty of the nation state by making it necessary to harmonise national economic laws, such as on patent and copyright, minimise barriers to trade, investment and financial flows, and leave the determination of key economic variables like the exchange rate and the domestic rate of inflation to the market. All of this has cut into the economic sovereignty of nations. Since conflict threatens trade, and this affects the fortunes of shareholders and workers in dozens of countries, the avoidance of conflict had become a second justification for the abrogation of national sovereignty.

Re-emergence of Ethnic Loyalties

The other major force that has been unleashed by the end of the Cold War, is ethnicity. Ethnic loyalties have resurfaced not only in the newly emergent nations, where the process of nation-building on the European model is far from complete, but also in many older and supposedly homogeneous nations of Europe. So widespread is this resurgence that one can legitimately ask whether ethnic groups had ever been really homogenised or whether the political, and even social expression of ethnic identities had been simply suppressed in nation states that had been built through conquest and coercion.

The revival of traditional ethnic divisions is only half the story. To them must be added the new ones that have been created by large scale immigration, such as of Turks to Germany, North African Muslims to France, and Hispanic peoples to the USA. All of these have clearly defined identities and deep loyalty to their own groups; old and new ethnic groups demand accommodation through a redefinition of the European model of the nation state.

The modern European, or Westphalian State, which came into being almost four centuries ago and developed over the past four centuries, is ill-equipped to cope with either the integrative pull of the global market, or the disintegrative push of ethnicity. The former exerts a steady pressure towards the softening of frontiers to cope with greater and greater cross border flows of not only goods and services but also people. But the European nation state was predicated to have hard borders. It tried to homogenise people within its broders and create a single culture. Inevitably this widened the cultural gap between them and their neighbours across the border. And it lent itself far more easily to economic autarchy, enshrined first in mercantilism and then doctrines of protection of infant industries to foster industrialisation, than to a world without economic frontiers.

The inherited baggage of the European nation state is therefore a mindset that makes it very difficult for such states to adjust to the political and economic imperatives of globalisation and ethnicity. When such a unitary state seeks to increase its linkages with the rest of the world it is much more comfortable in a hierarchy than a democracy. When it promotes the pursuit of peace, it tends to do so in the role of a policeman, rather than one who seeks peace through accommodation.

When this mindset is translated into policy, ensuring global peace means ensuring a monopoly of nuclear arms for the west; free trade means the lowering of barriers in the developing countries but putting up non-tariff barriers in the industrialised countries, and so on. Most glaringly, this mindset is visible in the interdiction of the free movement of labour. Today, literally everything can move across barriers, goods, services, and capital but not labour. This interdiction remains despite the fact that the high wage countries are the prime sufferers from it. For as wage differentials have widened between the rich and poor nations so has the exodus of capital from the former to the latter. As a result, the mature industrialised countries face de-industrialisation while the low wage countries that have been most successful in attracting capital are experiencing 7 and 8 per cent rates of growth.

The problems of the unitary nation state in dealing with resurgent ethnicity are even more severe. European theories of the state postulate only a relationship between the individual and the state, and cannot easily accommodate the existence of an intermediate tier of loyalty between the two. To the European, the possibility of there being different laws for an identifiable subgroup, than for the rest of the nation is close to anathema. But this is the very least that a recognition of ethnicity demands. As a result, there is a predisposition to treat every demand for ethnic self-assertion as a demand for secession—independence if it is viewed sympathetically, and insurrection if it is not.

Unfortunately for the European nation state, the profound changes that have been incubating for the past half century under the ice of the Cold War have made both the implied 'solutions' to the problem of ethnicity unviable. If an ethnic group becomes fully independent, its economic linkages with the country of which it was a part, and through these with the rest of the world, are abruptly severed. Growing global interdependence is rapidly making the cost of such economic severance insupportable. On the other hand, with the rise of information technology—the Press, TV and satellite communications—the traditional way in which unitary nation states dealt with dissent, by obliterating it, is also no longer a feasible option. With the printed word having given ethnic groups a powerful new means of self-identification and TV having brought the world into one's drawing room, the pogroms that would be needed to obliterate an ethnic group or force it to submit to the will of the majority, will no longer be tolerated. The only way of dealing with ethnicity, therefore, is through accommodation.

If humanity is to survive, the world will surely find a way of reconciling the conflicting pressures of global economic integration and ethnic self-assertion. The answer clearly lies in some form of federalism—a devolution of power within the nation states and a loosening of its political and economic bonds, but one that does not, except in rare circumstances, go so far as to dissolve the bonds of nation state itself. But will the process be relatively smooth or will we have to have many more Bosnias and Chechnyas before we find the solution?

Ethnic Federalism : The Indian Model

This is where nations built on the European, unitary model could profit from studying the Indian experience of nation-building. To most Europeans and Americans the thought that it is not only India's past, but also India's present from which they may have something to learn, is not easy to digest. But a close study suggests that the way in which Indian federalism has evolved and continues to evolve may contain important pointers towards the evolution of the European nation state in the coming decades.

Indian federalism is similar in form but very different in content to the federalism of the USA or Australia. In the latter, federation is little more than an administrative arrangement, that often reflects little more than the fact that the federating States joined the Union at different points in time. Indian federalism, by contrast, is built on the historical foundations of the Empire State in which, for hundreds of years at a time, starting from the Mauryas and ending with the British, a single paramount power ruled a host of ethnic sub-states, each of which had its own history, culture and traditions of independence. The Empire State succeeded so long as it respected the autonomy of its constituent units. The modern Indian State has also succeeded because it has respected, by and large, the autonomy of the States that is enshrined in the Constitution. India's is therefore an 'ethnic' federalism, in which each constituent 'State' is, more or less, a lineal descendant of one or more of the ethnic sub-states of the old Empire State.

The principal characteristics of India's ethnic federalism are that the entire State is one economic zone in which not just capital but also labour is free to move anywhere in search of work. In practice this freedom, which is enshrined in the Constitution, is constrained to varying degrees in the weaker economic States by rules that require employers to give a minimum proportion of the jobs to people from that State. Such rules are observed sketchily at the best of times but provide an important psychological reassurance to the host populations in each State.

Similar restrictions also hedge the constitutional freedom to buy land and start a business, in a few of the weaker States. But here too, a wide variety of exceptions and loopholes make sure that their impact is mainly psychological.

On the other hand, there are very real safeguards for peoples' ethnic identities. The Constitution leaves education, agriculture and law and order entirely in the hands of the State Governments. People thus learn their own mother tongues and their own histories in school. The laws they are governed by fully reflect their own traditional laws and customs. This is doubly safeguarded by keeping agriculture, where most of the oldest customary law is to be found, firmly under the aegis of the States.

Financial Devolution

There is an elaborate system of financial devolution. Certain taxes, like customs duties, are collected by the Centre and kept by it. Others, like the sales tax, are collected and retained by the States. But the main taxes, the income tax, and excise duties, are collected by the Centre and shared with and between the States, according to a formula revised every five years by a statutorily appointed Finance Commission. Overall, the share of the States in the total tax revenues of the nation have risen steadily till they have more or less stabilised at slightly more than half. The division of Centrally collected tax revenues, and of Central assistance for the States' planned investments between the States, has contained a strong element of redistribution to aid the weaker States. This has not, in practice, levelled the playing field completely. Private investment has continued throughout the last forty years, to concentrate in a handful of industrially advanced or mineral rich States. But the psychological reassurance these measures have provided have played a very large part in keeping India free from ethnic conflict and steadily strengthening the bonds of the nation.

Democratic Decentralization

Two other methods used by the Indian State to harmonise the demands of ethnicity and nationhood need to be mentioned. Not long after the linguistic reorganisation of India's States in 1956, it became clear that this had not completely resolved the problem of ethnicity. Several of the new States contained ethnic subgroups who found themselves if anything even more at a disadvantage in the face of a now more homogeneous majority. Initially this problem came to light in the North-East, where the State of Assam contained a large number of distinct tribal groups. The first solution to this problem, after local agitations outlined the need for one, was the subdivision of such States into smaller ones. Thus, a hill States' federation was carved out of Assam, called Meghalaya. But it soon became clear that every division created a new minority and a fresh demand for a new State. Thus in the early eighties the Government decided to create a third tier of devolution, on a case by case basis ? This is the Autonomous Development Council, within a State. These Councils of which three have been created so far, and two more are on the way, will be self-governing in education, culture, local law and order maintenance, and development planning at the district level.

Between 1989 and 1992, the Centre created the fourth and final (misnamed third in official parlance) tier of democratic institutions. It made elections to panchayats—village councils—mandatory every five years, devolved a sizeable part of the States' developmental allocations to them and gave them autonomy in framing local development programmes, implementing various State and Centrally planned schemes for employment generation, shelter and primary education, and gave them limited powers of taxation and fund raising. It is too soon to tell how the new panchayat system will function but apart from making local administration far more responsive to local needs and improving the delivery of developmental programmes, it holds out the promise of localising the last and potentially most disruptive form of conflict in the country—the conflict between castes.

However finely you slice the cake, devolution of the above kind only empowers ethnic groups that enjoy a measure of geographical concentration. It cannot help those who enjoy some distinct common feature of identity but are thinly spread out over a large part of the country. This is the case with India's religious groups. Even among the Sikhs, who are the most geographically concentrated of India's religious minorities—between a quarter and a third live outside Punjab. To accommodate their yearning for security of identity India has also followed the other method of accommodation briefly mentioned above—the acceptance of separate personal law. What it has not done is to allow the establishment of a separate system for the adjudication of those laws. There are no Shariat Courts in India.

Taken in its entirety, the above represents perhaps the most complex and at the same time most flexible system of devolution and power sharing that the world has ever seen. The measure of its success is not that there has been no ethnic conflict in India, but that, given its bewildering diversity, it has had so little and that accommodation has been reached even there with so little violence. Taking the Punjab, Kashmir and Assam insurgencies together, in all no more than 20 to 35 million people were affected out of a population of more than 900 millions. The Punjab insurgency, which never affected more than a tiny minority of the Sikhs, was brought under control over ten years, with a loss of about 40,000 lives, of whom 25,000 were Sikh civilians killed by the insurgents for their refusal to co-operate. The far more serious seven-year long Kashmir insurgency is winding down, and has cost around 20,000 lives, including 3,000 Kashmiri Muslims killed by the militants. The Assam mini insurgency has cost a few hundred lives and has been more or less snuffed out through a combination of coercion and accommodation.

Lessons from the Indian Experience

There are four broad lessons that others can learn from India's experience:

The first is that ethnic diversity is not a threat to nationhood. Accommodating it by explicitly recognising intermediate tiers of loyalty between the individual and the State can strengthen it rather than the other way about.

The second is that devolution of power to one or more federal tiers is perhaps the best way to obtain accommodation but only works when the ethnic minority is geographically concentrated. When it is not, the only way that may remain open is to accept the existence of separate personal laws. This should be confined, however, to the personal, *i.e.* civil domain and not cover crimes that come under the penal code. The separation of judiciaries, to create two completely parallel systems of law, is probably not desirable either.

The third, fourth and fifth lessons are for the emerging international political and economic order from the Indian microcosm. The world will not be able to remain at peace if it continues to maintain and strengthen barriers to the free movement of labour. That is the single glaring difference between the Indian microcosm and the global macrocosm today. In India labourers from underdeveloped Bihar move freely to places as far away as Nagaland in the extreme East, Goa in the South and Punjab in the North-east to find work, without fear and without meeting resistance. Labour from Orissa ends up in Gujarat, from U.P. in Bombay and Kashmir, and so on. It would take too long to explain why the absence of similar global freedom of movement makes a future conflict inevitable, but it does.

The fourth and fifth stem from the fact that if the Indian federation needs a paramount state, the global federation too needs a paramount authority. But that paramount authority has to be first democratic and not hierarchical in that the smallest state within it must have the same rights in the global constitution as the largest (power and influence is another matter). And the paramount state must perform consciously a redistributive function between the economically strong and the economically weak. I will close by referring to remarks made by Harvard's Professor Stanley Hoffman at a Seminar in Harvard on 23 April 1995. He said: 'I am very worried about where the world is going because we are putting all our eggs in the basket of competition. But international competition creates both international winners and international losers. And today the losers are in danger of being forgotten.'

One has only to compare the emerging international order with the extant India to see how far the former has to go in evolving towards a genuine stable peace.

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[1] The pace of technological change has not been even. Schumpeter identified waves, perhaps forty to fifty years apart. These resulted from certain major breakthroughs that released "gales of creative destruction". The existence of these cycles does not invalidate the assertion made here that overall the pace of technological change has accelerated continuously over the past century and a half.

CHALLENGES BEFORE PARLIAMENTARY DEMOCRACY*

Sarla Maheswari

Introduction

Fifty-five years of parliamentary democracy in India, in itself, is a unique phenomenon in the world. This is so not because of the fact that nowhere else in the world parliamentary democracy has survived for so many years, nor because our achievements are unparalleled. The significance and singularity of our parliamentary democracy underlies in its socio-economic structure and geo-political conditions of the land. If India is excluded from the history of parliamentary democracy, anybody can easily draw a conclusion that parliamentary democracy has been the legacy of the capitalist, colonialist and imperialist countries. The sustainability of parliamentary democratic system as seen in the industrially developed countries of Europe, America and Japan in Asia is not visible in any country of the Third World save India. Thus, parliamentary democracy in our country does indeed carry a significant meaning without which probably parliamentary democracy could never be accepted as a universal system.

Evolution of Parliamentary Democracy

In this context, it would be pertinent to have a glance at what the founding father of Indian Constitution, Dr. Bhimrao Ambedkar said about parliamentary democratic system before Independence. In 1943, while speaking in a camp held under the auspices of the Indian Federation of Labour, Dr. Ambedkar said: "It is...a matter of some surprise that there has been a revolt against parliamentary democracy...there are very few countries in which there has not been discontent against parliamentary democracy. Why should there be this discontent and dissatisfaction against parliamentary democracy? It is a question worth considering. There is no country in which the urgency of considering this question is greater than it is in India. India is negotiating to have parliamentary democracy. There is a great need of some one with sufficient courage to tell Indians, "Beware of parliamentary democracy, it is not the best product as it appeared to be."[1] Dr. Ambedkar further said:

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*This is a translated version of the original article received in Hindi.

> Parliamentary democracy took no notice of economic inequalities and did not care to examine the result of freedom of contract on the parties to the contract, should they happen to be unequal. It did not mind if the freedom of contract gave the strong the opportunity to defraud the weak. The result is that parliamentary democracy in standing out as protagonist of liberty has continuously added to the economic wrongs of the poor, the downtrodden and the disinherited class. The second wrong ideology which has vitiated parliamentary democracy is the failure to realise that political democracy cannot succeed where there is no social and economic democracy...Democracy is another name for equality. Parliamentary democracy developed a passion for liberty. It never made even a nodding acquaintance with equality. It failed to realise the signifiance of equality, and did not even endeavour to strike a balance between liberty and equality, with the result that liberty swallowed equality and has left a progeny of iniquities.[2]

Ensuring Socio-Economic Justice

Interestingly, history bears testimony to the fact that in India, the responsibility of framing the Constitution was entrusted to those who had serious reservations about it. Commenting on the Objectives Resolution moved by Pt. Jawaharlal Nehru in the Constituent Assembly on 13 December 1946, Dr. Ambedkar observed:

> I must confess that, coming as the Resolution does from Pandit Jawaharlal Nehru who is reported to be a socialist, this Resolution, although non-controversial, is, to my mind, very disappointing... If the Resolution has a reality behind it and a sincerity, of which I have not the least doubt... I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, that there would be nationalisation of industry and nationalisation of land. I do not understand how it could be possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialist economy.[3]

If we take into account the subsequent legislations as enacted by the Indian Parliament, the above views of Dr. Ambedkar are of great significance. The strategy adopted by India for evolving her independent economy through the Five-Year Plans after Independence, the deep interest and enthusiasm shown in the creation and development of the Public Sector Undertakings, the abolition of the Princely States and their merger with the Indian Union, her marching ahead towards the abolition of the

Zamindari system by way of enactments and provision of compensation for the acquired land which had a deep bearing on the authority of the feudals, the devolution of political power to the citizens by way of adult franchise and the adoption of the policy of non-alignment to ensure the sovereignty of India are steps that bear the imprint of a socialistic approach which essentially links the success of any democracy with social and economic justice and equality. These achievements of independent India were in no way minor ones.

With the Independence of India started the process of the colonial era coming to an end. Many countries became independent and in spite of their opting for democracy in the beginning, parliamentary democracy could not be as stable in these countries as in India. Later on, in most of these countries, either a military regime took over directly or parliamentary democracy existed for namesake only. In a parliamentary democracy, the Opposition gets due importance; tolerance is shown towards differences and social diversity is accepted but such ideals were not visible in these countries. Most of the newly independent countries entered into a military alliance with the imperialistic forces losing their economic and political independence. The experience of our neighbouring country, Pakistan is before us. The people of Pakistan tasted the fruits of parliamentary democracy only for a very brief spell after their Independence. Military dictatorship takes over there at regular intervals with the direct financial and strategic support from the imperialists. The economies of most of the newly independent countries are being governed by the Western capitalists which has been detrimental to the political independence of these nations.

It is an achievement of Indian democracy that instead of joining any imperialistic bloc, it has been following an independent foreign policy. It has adopted the path of economic independence and self-reliance, and has not deviated from its policies so far despite all odds. It is an achievement which should not be underestimated.

Economic Base of Indian Democracy

However, those who have been studying the economic base of Indian democracy are of the view that the basic reason for India's independent policies is that even before Independence, India was one of the most developed British colonies. During the British period itself, the capitalists of India had attained an independent economic status. Despite all odds and the impediments created by the colonial Government, Indian capitalists had started making their mark in certain industries like textiles, sugar, cement, etc. A particular section of the people had amassed huge wealth especially during the Second World War. The announcement of the Tata-Birla Scheme for the economic development of India during the last days of the Second World War was substantial proof of the status of the neo-capitalists of India and their expectations as also the direction they wanted to give to the development of India's economy. In the administration of the Tata-Birla Scheme, the importance of the role of the State in the national economy was very well underlined. Needless to say, the Tata-Birla Scheme could make a clear impact on the Five-Year Plans. Shri E.M.S. Namboodiripad in his book on the Five-Year Plans has thrown light on the Plans *vis a vis* the Tata-Birla Scheme. This Scheme could be implemented only because the national leadership participating in the struggle for Independence had the unstinted support of the Indian public. The Congress party had a great influence on the people of India. It was only because of these leaders of mass following and the traditional feelings of nationalism of the general public against imperialism that the emergence of a new nation could be possible. The leadership of this country and the Government had immense power of bargaining against the imperialists and they were capable of withstanding all the imperialistic pressures. This is the fact which made India distinct from all other newly independent countries and their Governments. Other newly independent countries neither had a developed and capable capitalist class like India nor their leadership enjoyed support of the masses against imperialism. That is why the structure of democratic and representative institutions in other countries could not take the same shape as in India, ensuring liberty and freedom of expression.

Post-Independence Challenges to Democracy

Just after Independence, Indian democracy had to face several challenges. The first and foremost was that of the integration of the Princely States. Most of the Princely States of India had friendly relations with the Britishers who wanted that there should be no curtailment of the rights of these Princely States. They wanted to use them as a fifth column in India and therefore, the British Government left the question of merger of these Princely States with India to their discretion. It was not obligatory for them to merge either with India or Pakistan; they had the choice of maintaining their independent entity. However, the fact remains that the British colonialists and many of the western theoreticians find it hard to believe even today that a country like India could remain united amidst her diversities. The Indian leadership firmly rejected the theory of independent Princely States which otherwise posed a permanent threat to India's Independence and it took a strong step for the merger of these

Princely States with the Indian Union, and that played a pivotal role in strengthening the unity of India. After the merger of these Princely States, their rulers were given the right of Privy Purse and a number of other facilities but their political powers were taken away. This step of the national leadership was very significant to shatter the dreams of imperialistic forces to sneak into India through covert means. In fact, this paved the way for the real Independence of independent India.

Struggle against Feudalism

Another important step was the abolition of the *Zamindari* system. This step gave a severe jolt to the political strength of the *Zamindars*. Though the feudal class challenged the land reforms laws in court, the Parliament of India kept all these land reform laws out of the purview of the courts under article 31(b) and the Ninth Schedule of the Constitution, giving a clear message to them that ultimately they will have to abide by the Indian Constitution.

Despite these initial achievements of independent India and its political leadership, it had become clear right from the very beginning that the then leadership was not prepared for a decisive fight against feudalism. Moreover, it had become an integral part of their strategy to adopt an attitude of compromise with the imperialistic forces so as to take them along. Not only that, the then leadership was also not ready to accept easily the feeling of self-pride the struggle for Independence had created among the people of remote areas of the country. For example, before Independence, the Congress Party was fully committed to the principle of reorganisation of States on linguistic basis. The very concept of the Indian nation was conceived as a voluntary federation of all linguistic nationalities of India. This very concept played an important role to inspire all these linguistic States to take part in the Indian freedom struggle as an integral part of an independent Indian Federal Republic. During the pre-Independence period, even the Congress Committees were constituted on a linguistic basis. But after Independence, the Congress leadership was in a dilemma on the creation of States on the linguistic basis. Even after Independence this objective could be achieved only after a massive agitation for the creation of States on the linguistic basis and Potti Sriramulu laid down his life in Andhra Pradesh for this cause. Even on the question of official language, the national leadership was in a state of dilemma. While there was a need to get rid of English and to treat all the Indian languages as equal, the then leadership accepted English as a second official language but in the real sense it has continued to occupy the position of the first official language to this day.

The struggle for Independence had also set in motion a process of reawakening in the Indian society. It had created an awareness against the religious dogmas and superstitions prevailing in society. Public opinion was mobilized against a number of social evils. Therefore, it was but natural that all such provisions were enshrined in the Constitution of independent India as could prepare a legal base to put an end to social evils and superstitions which were at the root of social discriminations. These feelings were reflected in the proposals like the Hindu Code Bill and provisions of reservation at various stages for the Scheduled Castes and the Scheduled Tribes. At the same time, we are all aware that a section of the national leadership had expressed its reservations during the discussion on the Hindu Code Bill in Parliament. Fed up of all that, Dr. Ambedkar resigned from the Union Cabinet.

It means that our national leadership could not make full use of the possibilities of radical changes generated during our freedom struggle. In fact, our leadership took certain steps in the right direction, but in many more cases they adopted a compromising attitude which created several problems for Indian democracy in later years. The history of our parliamentary democracy of the last fifty-five years has been the saga of confronting the problems created by this very compromising attitude. In spite of all these, parliamentary democracy is intact in our country which is in itself a big achievement. However, the objective of Indian parliamentary democracy in terms of creating a society based on justice and equality and ensuring prosperity to the people at large could not be achieved in full measure. That is why even after fifty-five years, parliamentary democracy is, at times, confronted with such threats which have shaken its roots and which, of course, cannot be lost sight of.

The drive towards abolishing the *Zamindari* system which started just after Independence was stalled well before it could reach a logical conclusion. Land reforms have not been fully implemented in the States, barring a few. The basic tenet of land reforms that tillers of the land will be the owners of the land is yet to be realised. That is why the chances of rapid increase in the purchasing power of the rural populace have become bleak; this has also created hurdles in the expansion of the Indian market. Consequently, after two decades of momentum in industrialisation after Independence, economic recession started. This led to the disillusionment of the people with the Central Government.

Democracy and Secularism

The attitude of one section of our national leadership towards secularism which was accepted as the core and kernel of Indian democracy could be revealed by the fact that the Constitution of India did provide for the safeguards of the rights of the cow by way of putting a ban on cow slaughter as much as it did talk of safeguarding the rights of individuals. This was not the thinking of any environmentalist; rather it was directly linked with the Hindu religious ideology. In the later years, the long history of the attraction of a part of the Congress leadership towards organisations having communal thinking is sufficient enough to indicate as to how the way has always been paved for communalism in the name of nationalism. The incident of the sudden appearance of Ramlalla in the Babri Masjid only after two years of Independence and the inability shown by the secular leadership of the Congress to frustrate that move despite enjoying extensive support of the public is also an example of the same. Right from the beginning, this dilemma among a section of the Congress leadership had sown the seeds of all such problems which our nation is facing today.

Likewise, the question of the federal structure of India is equally important and linked with the very basis of parliamentary democracy. In the Constitution, there has been a lack of a proper balance between the powers of the Union and that of the States. Soon after attaining Independence, it was considered necessary that the Centre should be equipped with additional powers in the interest of safeguarding Independence and achieving just and equitable development, and thus, our Constitution-makers accepted all those provisions. But subsequently, in accordance with the spirit of the federal state, it was necessary that there should be maximum decentralisation of powers and States should be given more powers. However, in practice, it was observed that policies for States were formulated to fulfil the political needs of the ruling party at the Centre. The institution of Governor was misused to hatch conspiracies against the Opposition-ruled State Governments so much that discriminatory treatment was meted out in providing financial assistance to certain State Governments in order to achieve narrow political ends. Such amendments were made in the Constitution which instead of aiming for decentralization, facilitated concentration of powers. The Central Government's tendency to grab all the powers reached the extreme end when the then ruling party imposed internal emergency in the year 1975 to suppress peoples' unrest and to tide over the immediate political crisis, thereby posing a serious threat to Indian democracy. The imposition of internal emergency was a glaring manifestation of the fundamental infirmities of Indian democracy. However, the verdict of the 1977 General Elections which rejected emergency made it explicitly clear that the commitment to democratic rights and values was deeply ingrained in the Indian masses. That unprecedented struggle by the masses to safeguard democracy has altogether changed the complexion of our politics and we can very rightly say that it was a rebirth of parliamentary democracy in India.

Decentralization of Power

After the General Elections in 1977, the Janata Party Government which assumed office could not last long. However, the democratic values on which this Government was formed, became undoubtedly the guiding principle for the future of parliamentary democracy in India. The Centre-State relations came into sharper focus and the Sarkaria Commission was set up. The debate on the role of Governors and use of article 356 is still going on. Freedom of mass media and right to information have become major issues today. The issue of decentralization of power came into the focus of debate again only after our experiences of emergency. The Leftist Governments of West Bengal, Kerala and Tripura played a significant role towards this end and as a result, the Panchayati Raj Bill was passed.

Flawed Economic Policies

As far as stagnation in the economy is concerned, the Central Government has not learnt anything from its experiences. Though it correctly identified the flaws in Government functioning such as *inspector raj* and red tapism, it drew a wrong conclusion that the only way to overcome these ills was privatisation of the economy. The Public Sector Undertakings which were the backbone of the industry have been blamed for corruption which originated from the houses of the politicians and the drive for a liberal economic policy which was devised as a means to industrialisation by attracting more and more foreign capital. The heavy accumulation of foreign debt through foreign commercial banks and financial institutions started during the Rajiv Gandhi regime as a result of which the stagnation in the economy was overcome temporarily, but by the year 1989-90, Indian economy had to suffer a major setback due to the outflow of foreign capital resulting in a grave crisis of balance of payments. This was the period when the National Front Government was formed which was subsequently brought down by the Bharatiya Janata Party. During that period, the Gulf war also broke out. At this critical juncture, a new economic policy was introduced during the Narasimha Rao

Government in 1991. After forty-five years of Independence, it was for the first time that the people of India felt that they were not fully free to formulate their economic policies. On the plea that we will have to obey the dictates of the creditors, the infrastructural adjustment programme of the International Monetary Fund and the World Bank was implemented as a prescription to tide over economic stagnation.

The Narasimha Rao Government was a minority Government with several inherent weaknesses. During the rule of the National Front Government itself, the Bharatiya Janata Party started the campaign for the construction of the Ram Janmabhoomi Temple in order to build up a Hindu vote bank. This campaign continued even after the formation of the new Government in 1991 and the demolition of the Babri Masjid at Ayodhya on 6 December 1992 which shook the foundations of secularism, one of the main pillars of our democracy. Since then, Indian democracy is facing a crisis. Due to the pro-Hindu stance of the Government the feelings of secessionism are on the rise among the minority community and the problems of the likes of Kashmir have assumed serious dimensions. The upsurge in Islamic fundamentalism all over the world and the role of Pakistan in it has made the Kashmir problem all the more complex.

Thus, clouds of danger are once again hovering over the unity and integrity of India after fifty-five years of Independence which can prove to be quite harmful. Today, the Kashmir issue is not merely one of terrorism. Cross-border terrorism can be addressed by joining hands with the global campaign against terrorism but the core issue of Kashmir is linked with the identity of the Kashmiris. It is an issue linked with safeguarding the special constitutional rights conferred on the people of Jammu and Kashmir. It is an issue linked with the federal structure and decentralisation of powers in India. If these problems are properly addressed and steps are taken towards achieving the goal of social equality in accordance with the dreams of Dr. Ambedkar, and the basic spirit of freedom, secularism, democracy and federal structure is safeguarded, then India will be playing a vital role in the history of parliamentary democracy for many many years to come. On the other hand, if communal forces, imperialism, anti-democratic, anti-secular and anti-federal agenda, etc. are encouraged, it will ultimately prove to be fatal for parliamentary democracy.

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[1] *Dr. Baba Saheb Ambedkar: Writings and Speeches*, Vol.10, p.107.

[2] *Ibid*, pp.108-09.

[3] *Ibid*, Vol.2, pp.49-50.

INDIAN POLITICAL SYSTEM—AN OVERVIEW

Mamata Banerjee

Introduction

One stereotype political description of India says it is the world's largest democracy. Thirty years ago, when some of us were cutting our teeth in politics in the violent streets of Calcutta, I would confess the description sounded attractive. A combination of youth, inexperience and inadequate understanding of the Indian polity, however, precluded us from shifting our gaze from the 'distinction' and focus on ascertaining the compatibility of the largest democracy with the working of the political superstructure, its highs and lows, its strengths, its distortions and, above all, its connection with the people it is supposed to serve.

Origin of the System

Before I go into seriously attempting a portrayal of our political system, let me quickly recapture a bit of history. As I perceive it, the origin of the system goes back to over two hundred years. The Indian struggle for Independence that had its seeds sown in 1800s had come to a fruition on 15 August 1947. The freedom at midnight for a country that would come to be known as the largest democracy and would play a critical role on the world stage in the intervening years had been bloody, devastating and unbearably painful, for it involved, for the first time in the history of mankind, displacement and transfer of huge chunks of population. Two years after the attainment of Independence, the Constitution of India, one of the linchpins of our political system, came into operation. The Constitution has determined for us a form of Government and given a direction in terms of rights and working of various important branches of the system, but the severe impact of the partition on the nation could not be wholly rolled back by the democratic system that evolved over the past fifty years.

Our Experience

In the course of my political career that spans nearly three decades, I have come across numerous instances of communal violence, blood-letting, killings and destruction that had their roots in the trauma of partition. The democratic environment, there is no doubt, often works admirably as a bulwark against the various disruptive forces in the country, and it would have worked even better had we not been forced to bear with the ramifications of the partition.

I was not being facile when I made the opening remarks—about that stereotype. The democratic environment, serving as a vehicle of development and change, has immensely benefited our vast country, its huge population divided into numerous and at times competing, social and religious denominations and the institutions required to initiate and sustain empowerment, welfare and prosperity. No, there cannot be any quarrel with the efficacy of the democratic environment—more so, after realizing with gratitude how it has refashioned some of the forces on the other side of the ideological divide which tried in vain during the past fifty years to hamper nation-building and co-opted them into the system.

Challenges before the System

But at the beginning of the new century, the question that puts itself up-front, requiring the nation to address it in its entirety, is whether the political system we have chosen for ourselves is truly democratic, people-oriented and moral. My concern, which amplifies the sentiments of many Indians, is that we stop being obsessed with the 'distinction' and start campaign for reforms of the political system.

Those of us having an insider's view of Indian politics are alarmed at the way the system is increasingly being driven by money, muscle power, individual greed and unconcealed ambitions, often at the cost of the common man the system is designed to serve. In a moment of retrospection, we shall not fail to realize how, as a people, we have been forced to relinquish the ideals that had inspired the founders of modern India to envision the country as a praxis of people-oriented politics and development for the rest of the world.

The defenders of the system, as we know it now, may argue that this system being a continual process evolves in tune with the changing times and that the country is actually as much a praxis as it was expected to be. There is a serious, in fact, a dangerous flaw in the argument in that it demands acceptance of the play of money, erosion of values and pursuit of immoral objectives.

Regardless of how far the changes have taken place, the hallmark of a people-oriented, clean and value-driven system continues to be the same— accountability. No system can hope to serve its people if it does not contain accountability as its cornerstone. As far as the Indian system goes, accountability is missing. Consequently, it has lost substantial credibility, honesty of purpose and values.

A vibrant political system means a multiplicity of political parties, which is all very good. But, the vibrancy of the system does not mean that the political parties constituting it should engage themselves in a race for the chair only and powers and trappings associated with it. In pursuit of the chair, the parties mobilize resources, appease various castes and creeds, misuse the administration and rig ballots. There is no denying the fact that this is the political fashion of the day.

Are we, in different political parties, in a position to reflect what the people, our real masters, think of the system? Plainly put, the people abhor the system for it is causing them hardships in different ways, but they are not being allowed to try out an experiment because it is being colonized by the same set of politicians, parties and sectarian agendas.

In a way, our system is also driven by numbers. The parties with the maximum number of elected representatives, of course, have a say in the running of the system. By contrast, the system in other democratic countries like the US, UK, even Bangladesh, is far more responsive and far less dominated by the compulsion of numbers and requirements. The most glaring example of accountability falling a casualty is found in the critical area of elections. One of the characteristics of our political system and I say this with profound sadness, is the brazen misuse of the electoral process by the parties holding office. True, there is a constitutional watchdog in the Election Commission, but its infrastructure is inadequate and it has to depend on the Government machinery to perform its job.

At this point, precisely, the compromise begins because the ruling party controlling the Government machinery, taking advantage of the Commission's helplessness, starts manipulating the preparation of the voter's lists and appointment of electoral officers—one of the most critical components of an election.

My sad realisation is that in Indian politics today the hero is not the well-meaning politician but black money, the criminal or the race for power. Smaller parties with a conscience, credibility and initiatives, are ending up as victims in the present situation just because they lack resources or oppose the use of muscle power. Seen from a close range, it is a funny system in that it allows a ruling party to win election by using muscle, money and administrative machinery and yet brazenly claim that it wins because it enjoys popular support—I have not come across a greater mockery of the system. The new generation of Indians, who have a global view of life, politics and empowerment and who are able to compare the same with the situation at home, thanks to the pervading influence of television, increased travelling and globalisation of ideas, have begun to suspect our own political system. If we do not act on the early signs of disenchantment, our democratic structure, of which we are justly proud, will collapse before long because of the rot that has set into our political system.

The corruption of the political system is eating into the vitals of the country. A manifestation of the malady can be had in the rampant diversion of the development funds for fulfilling the ruling party's or the politician's narrow and self-serving goals. By cutting off the flow of development funds meant for the needy in the States, the parties which run what can be termed as profitable political businesses, are thriving at the expense of the country's economy and real business and industry.

In the absence of effective monitoring and transparency, many parties do not see any wrong in making use of black or unaccounted monies that many companies and wealthy individuals pump into the system to further their commercial interests and ambitions. The parties, especially those in power, use a mix of black money, criminals and wrong promises to win elections. Once an election is won, the parties will not forget their dubious backers as evident from the way a taxation policy is framed, business contract awarded or a lawsuit against a criminal instituted or dropped.

Some Suggestions

What I have sought to recapture in the article is the spread of a cancer in our system of politics and governance, the manifestation of which every day burns our souls, flickering across TV screens or crowding the front pages of newspapers. If we are to move ahead as a civilized society, a responsible member of a new world order subscribing to fundamental values, we have to change our attitude and action and consciously commit ourselves to bringing about transparency and accountability in the system. Such a change, I believe, is absolutely necessary for carrying out political reforms without which the reforms we are attempting in the economy will never take off.

My suggestions in this regard are:

- Review the present political system.
- A Political Reforms Bill, envisioning accountability, transparency and credibility among the cornerstones of the system be placed in Parliament to flag off a national debate.

- The Election Commission be made self-sufficient so that it can hold free and fair elections without seeking help from the ruling party facing an election.
- A State going to the polls must be placed under President's rule before the election and the Election Commission be given a fair hand.
- Full State funding of election as a counter to circulation of black money.
- A legislation be enacted to combat and flush out criminals from the election arena.

It is only pertinent to say that Indians politics, which in a bygone clime meant fame, will continue to be regarded a dirty game, if we do not care to decide, once and for all, whether it should represent values or big businesses, big moneys and big party offices. In the present times, service for the nation is a slogan which appears to have no takers because "glamour and fashion" are now used to package politics. The alarm bells are ringing; we must strive to change as otherwise politics will be lost in the whirlpool of politics.

POLITICAL SYSTEM AT WORK

Biplab Dasgupta

Introduction

Indian democracy, after nearly 50 years of working, has failed to strike roots. The main reason for this is the failure to build a party system. Even after an election is held, there is no way of knowing who is going to form the Government. Between the two highly important political events—the holding of election and the formation of the new Government— a large number of 'unknowns' are likely to operate that would have the effect of either reinforcing or undoing the popular choice.

In the fluid conditions of Indian politics of today the fact is that we are in a situation where, at the individual MP level, any one can go from anywhere to anywhere, provided the arithmetic of Anti-Defection Law has been taken care of, and any party can move from any front to any other front, before, during and after the election, provided that it is in line with its perceived self-interest. No mental barrier appears to exist, nor any prick of conscience, in this situation of perfect mobility across party or alliance frontiers. Unless the electoral verdict is very decisive, election works merely as the 'first round' of the contest, while the final outcome is determined by the full play of market forces in the second and subsequent rounds.

Evolution of Party System

Let me digress a bit. The political world of 1967 was much simpler, with four easily identifiable clusters: Congress, Social Democrats, Rightists and Leftists. The two Social Democratic parties were the Praja Socialist Party (PSP) and Samjukta Socialist Party (SSP), Jana Sangh and Swatantra were the two right-wing parties, while the Communists were split into CPI and CPI (M). The number of regional parties was small, and smaller was their share of votes. Only two regional parties stood out—Akali Dal and DMK—both having very long historical and cultural roots among the people in their respective States. By 1967, both of these two regional parties had begun shedding many of their specific regional characteristics and were coming closer to the mainstream of Indian politics. In the Northeast, the All Party Hill Leaders' Conference (APHLC) also picked up many votes, but politics there had always been responsive to market forces. Each of the national parties had a clear identity—SSP led by Rammanohar Lohia was distinct from its milder and more pro-Congress PSP twin, Swatantra with large support bases among the Indian princes and top industrialists could never be confused with its rightwing twin patronised by the urban trading community, Jana Sangh, while the polemic between CPI and CPI (M) on the character of State power and their contrary attitude towards the Congress party ensured that one could never be confused with the other. The parties were differentiated by their ideology, programme, internal organisation, cadre type, method of campaigning and support base.

Generally speaking, Indian politics in 1967 was stable and predictable, and largely dominated by the national parties. This did not mean that the electoral choices were based on purely national issues; in the case of the Congress, its units in various States had the liberty to take sides on purely local issues that often came into violent conflict with those of the other State units of the same party. Such plurality was permitted, if not always actively encouraged, by the national leadership as these were seen as unavoidable imperatives of a parliamentary electoral system. The very amorphous character of Congress was taken as an asset, and as befitting a party that represented the plurality of the entire nation.

One Dominant Party System

As we all know, before 1947, the Indian National Congress, as its name implies, was a platform that brought together people of diverse political views, all united in their resolve to fight the colonial rule. After Independence, Mahatma Gandhi, recognising that its primary goal had been achieved, sought its dissolution as a political entity and wanted Congress to confine itself to social service, to become what he described as *Lok Sevak Sangh.* [Morris Jones: 47] This suggestion was turned down by others as they wanted to make full use of the name 'Congress' and its attendant goodwill among the masses. They justified this position on the ground that during the Independence struggle Congress acted as 'India's Parliament' and reflected all the legitimate interests of the nation; now, Congress could not cast off its political role since, without a very big party being in Government, India's stability and integrity could not be protected. [Morris Jones: 34-35, 89]

Between 1947 and 1967 the Congress domination of Indian politics was total; controlling Governments at all levels—national, State, municipality, union board (and later panchayat), and what have you. There are few instances in world history of a party so overwhelmingly dominating the politics of a country for such a long period. This period of two full decades could be used by the Congress leaders to establish some healthy conventions—e.g., to discourage defection, to share power with other political parties, to allow other parties to form State Governments and to remain in Government for their full term wherever they succeeded in winning election, not to allow money power to enter politics, not to use the rural rich as the 'village vote banks' for wining elections, preventing 'booth capture' by musclemen and permitting the poorest to vote without fear, to use 'Inter State Council', a constitutional body, for settling disputes among States and between a State and the Union Government, and so on.

This was not done. Unlike the pre-1947 period, Congress now had to compete with other parties for earning mass support; it was now a party among parties, yet the Congress mindset was not reconciled to it. To them, Congress was everything that the country was. Those who put themselves outside the Congress were, in some degree, engaging themselves in an un-Indian act. [Morris Jones: 34] But who could blame the rank and file in Congress? The Congress leaders suffered from the illusion that the Congress domination of Indian politics was nothing but natural and would continue forever, while everything else was an aberration. They could not visualise a situation when their party would be reduced to a minority in a large number of States, and even in the national Legislature, or that the flow of defection would change direction, away from Congress. A leader as level-headed as Nehru declared in 1953: "The Congress is the country and the country is the Congress." [Morris Jones: 89]

Identification of Congress with the liberation movement remained strong in popular mind as long as the old generation of Congressmen remained in the front rank. They continued to wear *khadi* and maintained a plain and simple standard of living. The years they spent in British jails earned dividends in the form of electoral victory in the first and the second General Elections, though from the Third General Election in 1962 onwards, a new generation of Congressmen took over, for whom power, much more than the satisfaction derived from sacrificing life and time for the good of the nation, became the primary goal; the legacy of the liberation struggle and the attitude of the Congress mind in favour of a monopoly of State power remained unchanged.

One Dominant Party Model

At that time, the prevailing theoretical model was that of a 'one-dominant party system'. The Indian politics was expected to operate in line with the Westminster model, but with one major modification—it would not be a system based on two or three major parties taking their turn in running the country's Government. The Opposition would not be regarded as the 'Government in waiting', as the Congress Party would be the sole governing party, and for ever. According to this model, Congress was the 'mother party' and the other parties of dissident Congressmen and social democrats, or some regional offshoots, were its rebellious offsprings. The 'mother party' accommodated hundreds of diverse, mutually conflicting tendencies into one body, and maintained a balance between those. While this made the organisation somewhat flabby and loose, this pattern of organisation had the advantage of holding within its fold a very large support base.

When that equilibrium of manifold diverse interests was disturbed for one reason or another, and some of the elements in it took the view that their specific interests were being overlooked within the parent party, they dissociated themselves from the latter and contested the election on their own as independents or under the banner of a make-shift party; but, after the election and following some negotiations to redress their specific grievances, that party was closed down and its members rejoined the parent party. This was also true of many individuals who fought election on their own, because they were denied nomination by Congress, but after winning the election, returned to the Congress fold. These changes in political affiliation all moving in the same direction, were welcomed and were usually described as 'home coming'; it was seen as something natural and obvious that the rebels, after making their point, whatever it was, would return some day to the lap of their mother. No stigma was attached to this by, an individual or a group, or to their reuniting with Congress.

It cannot be denied that this model—of 'one dominant party system', with one large party at the core and with many smaller parties in the periphery, with factions in the core having regular interaction with the parties in the periphery, with factions occasionally going out of the core and joining the periphery and later returning to the core leaving the periphery—approximated the reality of Indian politics of that time. [Morris Jones: 170-217] Where it went wrong was in its claim that this was the ideal political system for India. It was argued that neither the two-party system of Britain, nor the one-party system prevalent in many countries of Africa would suit Indian conditions. A party of consensus like Congress, located at the centre of the political spectrum with a rich history and a sound popular base, maintaining a dynamic equilibrium of diverse and conflicting interests, of communities, linguistic groups, regional and local interests and so on, was best suited to India. The mergers, splits and all sorts of permutation and combination of political forces happening around Congress gave it an all-embracing character that was considered essential for India's unity and stability. The 'one dominant party system' would, thus, contain within itself all the attributes of a stable single party system alongside the plurality of a multi-party system.

Intolerance of Other Parties

This model influenced the attitude of the Congress party towards other parties. In a parliamentary democracy other parties are regarded as alternative choices before the electorate, should the Government of the day fail to deliver. In India, in the fifties and the early sixties, they were seen by the Congress leaders, including Nehru, as no more than pressure groups, as extensions of the ruling party itself, and not as parties having independent right to seek and win votes, not to speak of winning majority in State Legislatures. It was something unnatural and even 'immoral', according to this view, to even conceive of the defeat of the Congress party, the party that had won India's Independence, the party that was India, in any election. In the early fifties, Congress got defeated in Madras, PEPSU and Travancore-Cochin, but in each case it ensured that an alternative Government was not formed.

In the second General Election, in 1957, in Kerala (which was the old Travancore-Cochin plus some parts of Malabar, previously a part of Madras) the Communists won the absolute majority, and, therefore, could not be denied the opportunity to form the Government. Out of 126 MLAs in the Kerala State Legislature, 65, including five independents, were with the Communist Government, while 61 (Congress 44, PSP 9, Muslim League 7, one Independent) were opposed to it. When one of the Communists died, the figure became 64-61, and with the Speaker not participating in voting, 63-61. If the Communists lost that by-election the figure would have been reduced to 63-62, a difference of only one vote. But the Communist candidate won that by-election, and the majority of 3 was maintained. But, despite the success of the Communist Government in maintaining its majority in the State Assembly and even in passing the test of a by-election as a reflection of popular mood, the two major tests acceptable in parliamentary democracies, the Government was dislodged by invoking article 356.

Regional Parties

Though in this article we are not intending to examine the regional parties in detail, a few words cannot be avoided. As we have noted, in

1967 there were few regional parties of substance, excepting Akali Dal, DMK and those in the Northeast, each having deep cultural, social and linguistic roots in the history of the concerned State. The proliferation of the regional parties since 1967 and their increasingly active role in national politics, particularly since 1989, is, fundamentally, a reaction to the attempt by the national Government to make India more centralised and less federal in character than is desirable in a country as large as India and with such a plurality of tradition, culture, ethnicity and language [Sarkaria Commission: 543] This was reflected in various features of the Constitution, in making the Governor the head of the State administration, a political nominee of the Union Government [Sarkaria Commission: 139-159], in providing for a division of political and financial power between the Union and the States that was heavily loaded in favour of the Union, residual power resting with the Union Government, unlike the arrangements in federal countries like USA or Australia [Sarkaria Commission: 23, 25, 254, 255], in the provision of article 356 that was hanging like the sword of Damocles over the head of the State administration, giving the power of dismissal of the State Government to the Union Government [Sarkaria Commission: 161-162], and in making the centrally recruited cadres the heads of State administration and police. [Sarkaria Commission: 220]. Though the existence of a parallel set of Legislature, court and Government carries the illusion of a federal State, in practice the power of the State Governments is modest, particularly the powers of taxation and running the State administration according to their own priorities. The Constitution was essentially unitary with some federal features.

No less important, during the initial post-Independence years, was the tendency on the part of the Congress Government not to see Centre-State and State-vs-State disputes as Constitutional issues. [Sarkaria Commission: 237; Morris-Jones: 117] This was particularly manifested in the way steel, oil refinery, power and other major projects were allocated among States. Equally important were the cultural factors, including issue of imposition of Hindi on the non-Hindi population by way of administrative fiat that led to a severe regional backlash and reinforced regional sentiments in the southern and eastern parts of the country [Sarkaria Commission: 525-526, 528]. The partisan use of Governors, [Sarkaria Commission, 1989: 115], imposition of President's rule in States total disregard of local culture, excessive concentration of power in the hands of the Centre, all these contributed to a feeling of hurt of regional pride and the growth of local parties.

The fall of the Congress party from the commanding heights of Indian politics, first in 1967, then in the late seventies after the emergency rule was over, and then again in the late eighties mid-way through the tenure of Rajiv Gandhi, created openings for the regional parties. It should also be admitted that the non-Congress national parties failed to capitalise on the anti-Congress sentiments at the grass root level and left the vacant political space to be filled even by those who could be legitimately described as novices in the field of politics.

The period under the two United Fronts during 1996-98 can be described as the golden era of the regional parties, when the Indian Parliament, for the first time, gave full expression to the plurality of the Indian society, as there was no dominant party towering over others. The locus of Indian politics moved in their direction, emphasising more on the 'federal' features of the Indian Constitution, including greater use of institutions such as the Inter-State Council. It was no less than a 180 degree shift away from the days of the 'one dominant party' system in the fifties. Paradoxically, this was also the time when regional parties abandoned some of their distinctive features and were, in a sense, *nationalised* as they moved out of the narrow confines of State politics, and attempted to mould national politics on their terms. The 1998 election saw the spectacle of three competing national political combinations vying with one another to recruit the regional parties into their ranks. By now, both Congress and BJP reconciled themselves to the inevitability of coalition politics, with regional parties as important components of the coalition.

Coalition Management

The main problem with the Coalition Government led by BJP for 13 months had been that each of the constituents had its own political compulsions based mainly on the dynamics of State politics, on which it was unable to compromise. This is very much unlike the Coalition Government of the Left parties in West Bengal that has continued without any break for almost 25 years, largely because of its ideological cohesion, and of a common heritage of mass struggles.

Challenges before the Polity

In the previous pages we have traced the evolution of the Indian party system from the one party dominance of the fifties to the plurality and coalition politics in the late nineties. We have noted that the opportunities that were there in the first two decades of Indian Independence to establish a healthy party system along with a complementary set of healthy conventions with inner party democracy and tolerance for the rule by other parties were squandered.

The question we are addressing ourselves now is: how to get out of this morass? How to build a party system that is stable, orderly and bound by universally accepted conventions? How to make parties accountable both within and outside, conform to its own constitution, allow inner party democracy to operate, and adhere to a uniform code of ethics? How to improve on the human material that operates in the field of politics, and make it as respectable as it was once upon a time? How to bring back values into our political system? How to stamp the menace of defection out of our political system for all times to come? How to prevent the criminalisation of politics? How to bring back the sense of dignity among the ordinary voters so that crooks and criminals do not get elected? These are some of the real political issues confronting the country today.

Inner-party Democracy

A party participating in a democratic competition for power should be democratic within, and should respect its own constitution. It should hold regular organizational elections and should have a procedure for the renewal and orderly transfer of leadership. This is self-evident, but still needs to be stressed because inner party democracy is conspicuous by its absence in the vast majority of parties. The Dinesh Goswami Committee recommended in 1990 the withdrawal of election symbols from parties that did not hold elections in line with their own constitutions [Goswami Committee, 25], but this highly important recommendation was not implemented until 1998. Most parties paid lip service to this requirement by holding hasty organisational elections in 1997-98 to conform to this norm.

There should also be provisions in the party constitutions for handling fictional conflicts to prevent the party leadership from expelling rival factions out of the party, and also for handling indiscipline so that the party does not speak with too many conflicting voices, nor individual members or groups indulge in actions that are detrimental to the overall interest of the party. But the most important is, to make the parties modern, not relics of the feudal and colonial past, and not subject to the whims and caprices of their autocratic leaders who feel at ease when surrounded by sycophants and demand humiliating submission gestures even from their senior party colleagues. Equally important is the loyalty of the members and supporters to the party and its leaders. Such loyalty is more easily earned if a party is clearly demarcated from others in terms of policies, programmes, and way of doing things, and gives its supporters and members some sense of pride in belonging to an organisation that, in their view, is different and better than others. Loyalty and sense of belonging also comes from participation in decision-making and periodic conferences and conventions at all levels of the organisation, for formulating policies and programmes are the best ways of giving them that kind of feeling.

Accountability of the Political Parties

The issue of public accountability of the parties can be examined at two different levels—their conforming to some code of ethics in their functioning, and their accountability in strictly financial terms. The Goswami Committee suggested in 1990 a model code of conduct for the parties at the time of election, mainly refraining from using the privileges of office for electoral propaganda [Goswami Committee: 26-27], and to treat violation of the moral code as an illegal practice to be punished by de-recognition by the Election Commission. The Election Commission has already amended the Symbols Order to make such violation a case for de-registration. But this model comes into operation during election and only after the date of election has been announced, and does not cover the functioning of the parties at other times.

Under section 13A of the Income-Tax Act, the income of a political party from various sources is exempted from taxation, provided account books are properly maintained, the names and addresses of those contributing more than Rs. 10,000/- are recorded, the accounts are properly audited, and a return is filed. These requirements of filing a tax return and getting the account audited had been ignored by nearly all the parties and the concerned Government Departments, though this provision in the income tax legislation came into effect from 1 April 1979. Towards the end of 1995, the Tax Department seems to have taken notice of this provision and has asked the political parties to submit their return from then onwards.

Company Contribution

A related, highly controversial issue is that of funding of parties by companies. The Indian Companies Act allows such funding as long as it does not exceed 5 per cent of its average net profit, but requires, under section 293A of the legislation, to get any contribution above Rs. 10,000/- to be recorded for the purpose of audit, and to get the approval of the board before making such contribution. This is seldom done and as a consequence, shareholders, employees and ordinary people remain unaware of the names of the beneficiaries, and of the possible links between such contributions and the favours done to that company by the beneficiary party, usually the ruling party, in exchange of such support.

The Goswami Committee recommended a complete ban on company donations [Goswami Committee: 46], though some parties disagreed on such a ban, and pointed out that clandestine donation through contractors would not be easy to stop [Goswami Committee: 47]. A section of businessmen opposes such donation on a number of grounds: that it lacks transparency unless paid in cheque, that if it becomes known workers would ask for more wages, that eventually it is not the company but the consumer who would pay by way of higher prices of its products. [CII: 5, 6, 9]. Such payments are short in transparency also because these are usually paid in cash and out of the accumulated black money. As one senior industrialist pointed out: "if industry is also required to find money which does not appear in the account books and which is to be given for political purposes, how can this reconcile with paying taxes honestly, and correctly?" [CII: 5]

Election Account

There is a consensus in the country, and even among the parties, that the actual expenditure incurred by a candidate in an election far exceeds the ceiling prescribed by the Election Commission. Some argue that a country as poor as India cannot afford the luxury of such highly unproductive expenditure [CII: 3]; some also argue that the roots of most scams can be found in this compulsion to find money to cover high election expense. Some take the view that such ceiling should be put at a realistic level and should be subject to periodic revision. [Goswami Committee: 44]. Some argue that election expenses should not be taken in isolation from the overall funding position of the party. [CII: 9]

The most controversial is the provision under Explanation 1 of section 77 of the Representation of the People Act to exclude within this ceiling expenses made on behalf of a candidate's party or any one else, since it provides an 'escape route' for hiding actual expenditure. The Goswami Committee, while in agreement with the Explanation, added that any unauthorised expenditure incurred by any person other than the candidate or his election agent should be treated as an offence and be made punishable with imprisonment for a period of not less than one year. [Goswami Committee: 44-45]. In one of its decisions in a Public Interest Litigation initiated by an NGO, Common Cause, the Supreme Court permitted such party expenditure on behalf of a candidate, and not to include it within the ceiling on election expenditure of the candidate, provided the party concerned had recorded such contribution in its income tax return. [*Common Cause v. Union of India and Others, Writ Petition (civil) No. 24 of 1995,* quoted in *Shourie*] As for auditing, the Election Commission favours the auditing to be done by firms included in a panel of auditors approved by the Commission, though some parties are opposed to it.

State Funding of Election Expenses

The Goswami Committee favoured State funding, in kind, of at least a part of election expenses—such as those on fuel, jeep, electoral rolls and voter slips, and microphones, but only for the parties recognised by the Election Commission [Goswami Committee: 48-49]. France, Italy, Germany and the United States are among the countries that cover a substantial part of the party election expenses from the exchequer. [CII: 6] In France, all types of printing is done in the State-owned press, and the State covers expenses, always in kind, on vehicle, driver, petrol, hall hiring and public address system. All candidates, including independents, are provided equally, but if the candidate gets less than 8 per cent of votes he has to repay those expenses. In the United States, the State covers costs of national nominating conventions of the two major parties, and gives grants and various other types of support to the parties during election.

May be to mark a beginning of such State funding, the Chief Election Commission (CEC), in a circular dated 11 July 1994, stated: "All candidates, political parties shall address public meetings at all elections under the purview of the Commission from a common platform". The location of such common platform was to be determined by the concerned local administration, and ordering of speakers to be decided by lottery. It could not be implemented as it was found unworkable in the Indian electoral context, since different parties would have conflicting locational priorities in case of common platforms and there would always be the risk of a fight breaking out between the supporters of various parties. While covering stationary costs from public funding would be a great help, as for other items it would be difficult to control additional expenditure on those from private sources. [Goswami Committee: 48]

The proposal of the Goswami Committee of confining such support only to the recognised parties might be struck down by the Judiciary as discriminatory, if it becomes law and is disputed. If such support is extended to independents and to the candidates of non-recognised parties too, there would always be the risk of a rush of frivolous candidates unless something like the French provision for repayment of State expenses should the candidate receive less than a certain percentage of votes accompanying State funding is added. No less important is the issue as to how would State funding be shared among parties and candidates. Sharing on the basis of voting strength in the previous election would be unfair as it would presume no change in relative support of various parties since the previous election, and would be unfair to the parties who did badly in the previous election but are enjoying growing mass support. These are tricky but substantial issues on which so far not much thought has been given.

The Anti-Defection Law

One major conclusion that one can draw from our account above is that a party, or the party system as a whole, cannot be made stable unless defection is banned, or, at the least, not rewarded. The first piece of legislation to stop defection was passed in 1985. Under this legislation, the punishment for voting against the party whip is the expulsion of the member concerned from the Legislature, but what makes it ineffective is the provision that defection is perfectly legal if one-third or more of the members of the parent party in the concerned Legislature cross the floor collectively. In the latter case they would be recognised as a separate breakaway group and would retain membership of the Legislature under the new group. In other words, under the legislation, it is more a matter of mathematics than ethics.

It is indeed possible to prevent defection only if there is a genuine consensus among the parties on this issue. If all of them respect a convention not to encourage defection and not to try to benefit from defection, no legislation would have been necessary. If legislation was deemed absolutely necessary, a one-sentence provision would have been enough: that a legislator would automatically lose his membership in the event of defection from the party that has sent him to the House as its nominee in the election. For an opportunist defecting in response to a possible reward offered by the other side in terms of cash, kind, position, or something else, the only effective deterrent would be the loss of his legislative position.

Though one cannot rule out cases of honest difference between a member and his party on a question of principle leading to the surrender of party membership, the most honourable course of action to be followed by him in that event is to resign from the Legislature. It then remains open for him to contest again, may be as an independent or as a member of another party with whose ideas he is now more in agreement. In the ensuing election, he would have the opportunity to explain why he had changed his party affiliation and to get re-elected, should the electorate find his ideological shift justifiable. This is the stated position of the Left parties.

Such a provision would take care of most, may be 95 per cent of this menace of defection but would not entirely eradicate this disease. The 16 years of functioning of this law has also exposed several other major loopholes of the legislation that illustrate that law alone is not enough—those who are smart can always find some escape route. For instance, it does not take account of the change in the party affiliation of a legislator unless that is reflected in his voting in the Legislature itself. No matter how many speeches he makes against his erstwhile party outside the Legislature, if he continues voting in the Legislature according to the whip of the party that had elected him, his legislative position remains untouched. Formal expulsion of that member from the party does not lead to his ouster from the Legislature; on the contrary, it provides a legal route to become unattached from the party without losing his membership of the Legislature.

Criminalisation of Politics

There are limitations to what electoral reforms can do, unless the parties themselves decide not to recruit criminals and/or make them candidates. These criminals help the party to intimidate voters, to capture booths, and otherwise to display its muscle power. The number of polling stations where re-poll was ordered, in most cases because of booth-capturing, increased from 65 in 1957 to 272 in 1984 and then to 1670 in 1989 [Bhan, 1995: 26]. The Vohra Committee was set up in 1993 with the Union Home Secretary as Chairman in order to investigate the relationship between the criminals on the one hand and the Government functionaries and politicians on the other. It consisted of some of the seniormost and powerful civil servants such as the Secretary of RAW, the Director of Intelligence Bureau, the Director of CBI, as members. The report of the Committee dealt elaborately with the way the process of criminalisation works.

It might be asked as to what has prompted the increasing criminalisation of Indian politics in recent years.

The general public also has to take some responsibility for this phenomenon of criminalisation of politics. There is an old adage that 'the people get the Government they deserve'. Even if they cannot fight the criminals with guns, the people, if they so want, can take recourse to voting out the politicians who take their help or are themselves criminals. That quite a few criminal elements get elected every time an election takes place, and not always because of booth-capturing or intimidation, but because people vote for them consciously, knowing fully well what they are, cannot be denied. What prompts honest and ordinary common men to vote for them is a subject for sociological research. The important point to make is that the party system cannot be built unless crooks, opportunists and potential defectors waiting for the right offer in the market is purged out of the Indian politics, and are replaced by those with commitment, ideology and willingness to sacrifice. And in this task, not only the parties would have to conform to some conventions, the common and ordinary people too would have to ensure, by remaining vigilant and voting judiciously, that they actually do so.

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NEED TO REGULATE THE WORKING OF POLITICAL PARTIES

A. Surya Prakash

Introduction

One of the greatest achievements of Indian democracy over the last 50 years is that the system has enabled hitherto unrepresented social and cultural groups to overcome disabilities and to strive for their legitimate share of political power. This trend, to an extent, has been brought about by the denominational politics practised by several regional parties, but there is little doubt that it has improved the representative character of India's parliamentary institutions. While this indeed is a positive achievement, the rest of the story of Parliament is rather disappointing. There is a marked decline on many fronts, namely the quality of debates, members' interest in parliamentary work, conduct of members within the two Chambers, conduct of political parties and their parliamentary wings and moral standards.

Each of these factors need considerable elaboration but because of the constraint of space, I would like to take just one strand—the functioning of political parties—for discussion in this paper.

Growth of Political Parties

One cannot discuss the evolution and status of democratic institutions without taking a closer look at political parties. The growth of political parties, the state of inner party democracy within them and the way in which they carry out the responsibility of representing the people has a great bearing on the kind of democracy that prevails in a society. That is why much of the blame for the current dissatisfaction with representative institutions in the country must be laid at the door of political parties.

It is indeed unfortunate that despite a sublime democratic environment in the country for over 50 years, political parties have failed to develop in a healthy manner. The primary reason for this is that barring exceptions, most political parties in the country are personality-oriented. And since the persona of the leader is many times bigger than that of the party, the party's policy-making bodies do not develop and function in a healthy, democratic environment. That is why political parties have not grown into modern democratic outfits which breathe the free air of democracy.

Those anxious to improve the working of parliamentary institutions in the country will, therefore, have to attend to the task of regulating the formation and working of political parties. Some of the deficiencies that are apparent in their working are absence of membership lists; lack of inner-party democracy; non-maintenance of books of accounts and lack of transparency in the collection and distribution of funds; *ad hocism* in selection of candidates during elections to State Assemblies and Parliament; and use of black money for electoral purposes.

Reform of Electoral Laws : Recommendations of Law Commission

Many political scientists and well-meaning citizens and institutions have often voiced their concern over these issues and argued for legal and political initiatives to remedy the situation. The Law Commission of India is one of the institutions which has examined this issue in depth. The Commission, in its report titled "Reform of the Electoral Laws" has said that there is need to bring about a sense of discipline and order in the working of the political system.[1] The Commission has suggested amendment of the Representation of the People Act, 1951 in order to achieve this goal. The main proposals are as follows:

- Only political parties registered with the Election Commission should be entitled to contest elections.
- In order to secure registration from the Election Commission, a political party must swear allegiance to the Constitution of India.
- The party must have a constitution that outlines: procedure for admission, expulsion and resignation of members and for taking disciplinary action against members; composition and powers of the executive committee and other organs of the party; the manner in which general body meetings can be requisitioned and conducted and the procedure for holding conventions to decide questions of continuance, merger and other such fundamental matters.
- The party must maintain regular accounts of the funds it receives and submit its audited accounts to the Election Commission.
- The party must hold elections at the national and State levels in the presence of observers nominated by the Election Commission.

- The party's candidates for elections to the State Assemblies and Parliament must be selected by its executive committee on the basis of recommendations and resolutions passed by the concerned local units.
- Should a political party fail to comply with any of these provisions, the Election Commission will have the power to hold an inquiry, punish the political party by imposing a fine of Rs. 10,000/- for each day of non-compliance and even withdraw its registration.[2]

Criminalisation of Politics

Two other proposals made by the Law Commission needs to be acted upon. The first one relates to the growing criminalisation of politics. The Election Commission has been drawing attention to this problem for a long time but nothing has been done either by political parties or by Parliament to reverse the trend. The Law Commission has said that in order to tackle this problem, the election law must be amended. The law as of now is that no candidate can be debarred from contesting elections unless he has been convicted and sentenced to imprisonment by a trial court for certain offences. If there is an appeal pending against the trial court's order, the candidate has the right to contest elections. Thus, even if a person has been convicted of a heinous offence like murder by a trial court, he can get himself elected to the Legislative Bodies so long as his appeal is pending in a higher court. The Law Commission has said that in order to keep out criminals, all persons against whom charges are framed in respect of offences listed in the Representation of the People Act, 1951 must be debarred from filing nominations in elections[3]. This is a suggestion which needs to be acted upon. However, until this happens, the entry of persons with criminal background into Legislative Chambers will continue and show democratic institutions and political parties in poor light. The credibility of the political process will depend on the ability of political parties to take the initiative in this regard.

Ceiling on Election Spending

The other proposal mooted by the Law Commission relates to deletion of the existing proviso to section 77 of the Representation of the People Act, 1951. This proviso says that the expenses incurred by a political party cannot be taken into account while computing the election expenses of a candidate. It was added through a Presidential Ordinance in 1974 in order to provide candidates an escape route and to practically remove the ceiling on election spending. The Commission has recommended that this proviso be deleted[4]. The Election Commission too has been urging Parliament to delete the offending provision. Unless this suggestion is acted upon, the Election Commission's efforts to impose a ceiling on election spending will be futile. It will also not be possible to curb the flow of black money into the election arena.

Given the prevailing chaos and indiscipline in both national and State level political parties, these proposals are unexceptionable, but their implementation will depend on whether parliamentarians are willing to clean the Augean stables.

Deficiencies in Parliamentary Parties

The stunted growth of political parties has inevitably had its impact on their parliamentary wings and prevented the latter from functioning in an efficient manner. A closer look at parliamentary parties is certain to throw up some of these inadequacies:

- Structural-functional deficiencies that prevent regular interaction amongst party MPs on issues coming up in Parliament resulting in *ad hocism* and poor floor management and coordination.
- Near absence of debate and discussion within parliamentary parties on major issues that are raised by them in Parliament.
- Ill-equipped and poorly manned parliamentary party secretariats which do not have modern information storage and retrieval systems that are needed to give MPs the much needed back-up and research assistance.
- A general contempt for back benchers and for their views on issues before Parliament, the principle being that MPs need not be heard, but only need to be "whipped" to toe the party line.

Parliament cannot improve its functional efficiency unless something is done to remedy this situation. The existing deficiencies in the working of parliamentary parties has only compounded the problem for MPs who, in the Indian context, have to cope with enormous constituency pressures. MPs these days find it difficult to cope with constituency pressures and the deluge of petitions and requests from constituents seeking personal favours and *sifarish* for school and college admissions, jobs, domestic gas and telephone connections and even railway reservations. An Indian MP is, therefore, worthy of sympathy on this count but something needs to be done about it if Parliament is to retain its importance. The initiative in this regard must come from non-MPs in order to lessen constituency pressures on parliamentarians.

Needed : A Parliamentary Reforms Commission

The Government, media and NGOs need to educate voters on the role of parliamentarians and on the negative impact that such pressures have on the working of the country's apex Legislative Body. Until then, improvement in parliamentary standards would be an unreasonable expectation. But it would be many years before any such campaign can bear fruit. Therefore, one has to simultaneously look at the need for reorganising the work of Parliament and rationalising its methods with a view to improving its functional efficiency. This is an arduous task and would best be accomplished by a Parliamentary Reforms Commission.

In any case, it will not be difficult to find credible institutions and concerned citizens to take up the cause of MPs. But this cannot happen until political parties display an honesty of purpose in regard to regulation.

Strict laws govern the working of political parties in most western democracies. These laws have meant greater transparency not just in the collection of funds but also in the working of these parties. There is no reason why political parties in India should remain outside the framework of such regulation. And can there be a better occasion than the Golden Jubilee of the Parliament to take the first steps in this direction?

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[1] One Hundred and Seventieth Report on *Reform of the Electoral Laws,* Law Commission of India, May 1999, p.40.

[2] *Ibid.* pp.48-53.

[3] *Ibid.* pp.123-34.

[4] *Ibid.* p.189.

INDIAN POLITICAL SYSTEM—EMERGING TRENDS

M.A. Kharabela Swain

Introduction

The trends that the Indian political system have thrown up in the post-Independence era have been at times confusing. Generally, in the public mind in the country and in the minds of the people beyond India, the system has left some negative impact. On the other hand, the finer and positive developments signalling a very vibrant future have escaped public attention.

The evils of the caste system, the unequal distribution of resources such as wealth, education and political power, growth of regionalism, uneven economic and social development of the Indian society, the weakening of the central authority, etc. are definitely the worrysome features which our polity can do away with. But while delving deep into these matters, one could find several half-truths and myths prevailing in these areas. An objective analysis of them could also lead to better and more effective solutions of these problems.

Importance of Elections

The educated and elite mostly have a disdainful attitude towards the most potent activity of democracy—the elections. For them, elections are mostly determined by money power, as they believe that the poor people of the country have not properly understood the importance of elections and have become a purchaseable commodity. But the fact remains that it is the poor who have really understood the importance of elections and are coming out in every election in greater numbers to vote while the cynical elite stays back home on that day. The election day, for all practical purposes, has become a holiday and a day of festivity for the poor who do not go for any work on that day. They have understood thoroughly that they carry the levers of power on that day.

Increasing Demands for Reservations of Jobs

The "backwardisation", if I may say so, of the Indian mind is a very disturbing trend that has emerged during the last two decades. With the

Mandalisation of Government jobs, the clamour for more and more reservation in every field of life has given an impression as if no development has taken place during the last 54 years of Independence which has necessitated the demands for such reservation. The creamy layers of every caste which have usurped most of the privileges of reservation have seen to it that the privileges do not percolate down to the most backwards. While in the first one or two decades of Independence, most castes refused to be declared as backwards because of social stigma, they are now vying with each other to be so declared as they know that the advantage lies in being backward. Everyday, the list of backward castes, including that of the Scheduled Castes and Scheduled Tribes, is increasing.

Many States have also declared eradication of poverty as their avowed goal since they think that is the way more money would flow from the Central Government or international bodies. We are left to wonder whether they have any inclination to better the conditions of the poor! This is the reason why after the submission of each Finance Commission Report, a verbal war extends for almost a year where most such States project various methods of calculation suitable to them to declare themselves as being deprived and deliberately neglected. It is as if they want that poverty and deliberate inefficiency should be rewarded.

Importance of Self-Reliance

When Mahatma Gandhi led India to freedom, the country was poor but proud. The political culture and the national mind was in favour of of building India by Indians by the method of "*Swavalamban*" (self-reliance). For rural development, there was no Jawahar Rozgar Yojana (JRY) or Employment Assurance Scheme (EAS) at that time. People came forward to do their own development work. After five decades, the entire rural population, barring a few exceptions, has totally become dependent upon the Government for developmental work. They do not want to take up any such work on their own. The politicians have also encouraged the people in every possible way to depend only upon them or the Government for any work. While in the pre-Independence era, Government relief during any natural calamity was either not taken or reluctantly accepted by the bulk of the population because of a high sense of self-esteem, presently receipt of relief is considered to be a birth right by almost everybody. No sense of shame is now attached to it.

According to a survey conduced by the Planning Commission, 26 per cent of the population fall under the Below Poverty Line (BPL) category; however, most of the States have worked out a highly inflated figure. Everybody now wants to get his name included in the BPL list since all governmental facilities like loan, etc. are tagged to it.

Changes in Caste System

The caste system has also undergone a drastic change during these five decades. The individuals of the lower caste who have climbed the class hierarchy in the field of politics and bureaucracy have got social acceptability among the upper castes. Hence, in the elevation of the lower caste people in the economic and bureaucratic ladder lies their social emancipation.

Role of Bureaucracy

The salaried class of this country have usurped most of the privileges. Presently, the only job of most of the State Governments is to pay salary to their large staff. This has left the State Governments with very little money for any developmental work. Even more than one-fourth of the earnings of the Central Government is spent for this purpose. Because this class is organised and influential, it has been able to extract what it wanted. This has not gone down very well with others. The very perception of employing the people only through Government must go.

The bigger and more powerful the bureaucracy, the more corrupt becomes the country. The fall of some of the erstwhile Communist countries exposed the extent of corruption their system was putting up with. The absence of multi-party political system in those countries had led to the emergence of a very powerful bureaucracy which was also encouraging corruption. The legacy of a similar bureaucratic set-up has become the epicentre of all corrupt practices. And bureaucracy has become a very good coaching centre of corruption for the ignorant, ill-informed and mostly semi-literate political masters. Gradually corruption has gained social acceptance. But contrary to the public perception, North-East is much more corrupt than Bihar. The root cause of militancy and under-development of that area lies in this deep-rooted corrupt practices.

Negligence of Primary Education

The total negligence of primary education has become an unfortunate trend in India. In this respect, it is the Government which has failed miserably. While all other Asian countries have improved their lot greatly by educating their peoples, India has accorded a very low priority to this sector. In case of financial crunch, it is the education and health sectors which suffer by way of reduced allocation which is indeed unfortunate. Most primary schools have inadequate number of teachers.

Re-emergence of English Language

While the fiftees, sixties and seventies were the decades of Hindi as the national language, English has made a re-emergence in the nineties. The low standard of education at the primary school level has paved the way for mushrooming of English medium schools all over the country. With the onset of globalisation, English is now counted as a ticket to self-development among the elite class. The revolution brought in by the I.T. sector has also given a fillip to the English language since English is the language of the computer and this has given a head start to the Indian programmers ahead of the Chinese, the Germans, the Japanese, etc.

Conclusion

If we have to emerge as a super power, we must create a national environment—a national environment of excellence, efficiency and honesty. Indians have proved time again that in the power of knowledge and intelligence, they are superior to most. Why does an Indian work honestly and efficiently in a foreign country while he proves himself to be very average in India? All we require is a national environment of work culture—of excellence and honesty.

INDIAN POLITICS IN TRANSFORMATION

Shriniwas Tiwari

The President and the two Houses (the Rajya Sabha or the House of the representatives of the States of the Union of India and the Lok Sabha, the House of the people's representatives) together form the Indian Parliament. The Parliament of India has carved out for itself a pride place in the world of democracy for being the largest democratic country. It is not merely a legislative body in the sense of a law making body but much more than that, and there is no sense in giving it a restricted meaning which a "Legislature" would have carried.

During the days of the freedom struggle of India, the Central Legislature acquired some kind of status and importance as it came to be looked upon as one more front in the battle against alien rule. Thus, the Parliament played a key role in the freedom movement.

The stalwarts of the freedom struggle like Feroz Shah Mehta, Dadabhai Naoroji, Surendranath Banerji, Gopal Krishna Gokhale, Motilal Nehru, Bhulabhai Desai and Rajagopalachari were also eminent parliamentarians and by the level of their legislative performance, enhanced the prestige of the Legislature in the country. During the years immediately following freedom, we had with us outstanding leaders like Pt. Jawaharlal Nehru, Sardar Vallabhbhai Patel, K.M. Munshi, Maulana Azad, Dr. B.R. Ambedkar, Dr. Rammanohar Lohia, Dr. Syama Prasad Mookerjee, Madhu Limaye, Hiren Mukherjee, N.C. Chatterji, A.K. Gopalan and J.B. Kripalani who envisaged the comprehensive vision for retrieving the prestige and glory of this ancient land in the modern world. These leaders of free India, by their precept and example and parliamentary behaviour, set the pace and charted the course for Indian Parliament to develop along sound lines. Fortunately, we also had the great Speaker, Shri Mavalankar in the Chair to provide stewardship in the crucial transitional formative years. Thus, our Parliament got an excellent start. Successive Speakers of Lok Sabha sincerely endeavoured to strengthen the parliamentary customs, beliefs and ethos of Indian Parliament. The late Shri G.M.C. Balayogi, Speaker of the Twelfth and Thirteenth Lok Sabhas, also made concerted efforts to protect the high traditions during a crucial stage in our Parliament's history.

Those leaders who led the country soon after Independence had struggled for the freedom of the country alongside the common masses. Mahatma Gandhi lived the life of a common man and set an example of simplicity and sacrifice. There were high values, beliefs, ethos and traditions and a missionary zeal to build a new India those days. Leaders were ever ready for every sacrifice and their only aim was service of the common mass and the country.

These noble ideals permeated Indian politics for long. However, the great change came when universal adult franchise was introduced by the founding fathers of the Parliament as "an act of faith" in the people. Regrettably, over the years, there has been a continuous growth in politicisation at the grass root level, and now it is finding its manifestation in an increasingly restive and vocal electorate. The men and women sent to the Legislatures by the electorate reflect the mood and temper of the nation as a whole. That is why the Lok Sabha is called the House of the People. It is the mirror and voice of the nation. It cannot remain isolated from the people. If, over the years, the character and complexion of Parliament and of other Legislatures in the country have been changing, that is because the new generation of legislators, coming from diverse backgrounds, may not all be familiar with parliamentary processes and procedures; but the fact remains that they feel the pulse of the people and know what the people want.

Drastic changes occurred in Indian politics in about two and a half decades of Independence. The ideological politics of the early years was almost replaced by a political class for which grass root realism was more important. Soon, muscle and money power also started vitiating our political system. Today, the principles which permeated the freedom movement have been thrown to the winds. There is no political will to implement unpleasant measures in the larger interest of the national weal.

There can be no commitment in a leader for public welfare unless he is ready for sacrifice for the sake of the nation and the people. While many in public life still are imbubed with the noble ideals of the early years, over the decades, in considerable measure, politics seems to have degenerated into pure commerce and a profession and an easy going means for fulfilling one's ambitions.

Starting the last decade of the 20th century, we have been having Coalition Governments. Governments are now a cluster or collection of interests of various regional parties and smaller parties. All sorts of coalitions of totally incompatible groups are formed simply to gain office or to keep somebody out of it. This unfortunately has given rise to a certain propensity among political leaders to seek power, with expediency taking precedence over policies and principles. According to political analysts, "the Coalition's (Government's) ideal rests on true political parties, proportional influence of the partners and common responsibility." But we have not been able to achieve this coalition ideal because of our political heterogeneity and complexities of State level politics.

There are three major issues that critically influence today's politics. These are: money and governance; crime and governance; and corruption and governance. The role of money in governance has been undermining our polity; more legislation and less governance has been the tendency of Parliament/Legislatures also. This happens because there is a lack of firm and strong political will for the welfare of the common man. We should not hesitate in saying that up till the 1960s, party workers used to work with total dedication for the party and its ideology, but now every thing is done for money; what matters now is self interest. At present, all parties are facing various problems, including factionalism, casteism, communalism and ideological deterioration; that is why, nowadays, selection of candidates by political parties is based on caste and creed.

It appears that the whole world and our country too are in the grip of practical politics at this juncture. There are many politicians all over the world today but only a few among them are statesmen, while before the 1950s, this was just the opposite. In the context of our country, it seems that the main defect in political organisations are that they are neither democratic nor federal, nor loyal and disciplined and dedicated to their own ideologies. However, the fact remains that several political leaders and people at large follow certain ideals, believe in ideologies, selfless service, and welfare of all. People at large are the vital force of all political organisations and they want the political leadership to guide the country on the path of peace and prosperity. They look upto the Parliament and the State Legislatures to show the way in a dignified manner, befitting our cultural and democratic heritage. That being so, it is imperative that the elected representatives conduct themselves in such manner as would enhance the prestige and dignity of our Legislative Bodies.

COALITION GOVERNANCE AND POLITICAL STABILITY

K. Kalimuthu

Introduction

India has had the experience of Coalition Governments in the States as well as at the Centre in recent times. Coalition governance may be viewed either as at a contingency of democratic choice or as a stop-gap arrangement. Ultimately, it is the result of the voters' indecision which may be ascribed to a host of social, economic and systemic factors. It is high time that the electorate gave serious thought to this persistent problem and acted judiciously, taking into consideration the welfare of the nation as a whole.

Coalition Governments at the Centre

In 1977, after the General Elections, a Coalition Government headed by Shri Morarji Desai was formed. Several political parties with different ideologies constituted the Janata Government. In the actual working of the Government, the parties kept their separate identities intact, which hindered the evolution of a coalition culture. Ultimately the Janata Government resigned. Shri Charan Singh's Government which succeeded the Morarji Government also could not last for long because of the compulsions of party politics.

In 1989, the National Front headed by Shri V.P. Singh formed a Coalition Government. Though the National Front Government tried to arrive at consensus through interaction and negotiations on various problems, the heterogeneous elements which constituted the Government, supported by mutually exclusive and opposite groups, prevented the Prime Minister from taking firm decisions. Thus, the National Front Government failed to survive the test of the power game. The mandate of the electorate in the 1996 election was again indecisive and the Coalition Government made up of thirteen parties and supported by the Congress 'from outside' was installed. Coalition Governments headed by Shri Atal Bihari Vajpayee, Shri H.D. Deve Gowda and Shri I.K Gujral fell in quick succession. The subsequent elections also led to the formation of a Coalition Government at the Centre headed by Shri Vajpayee. Thus, the life span of the Coalition Governments which came into existence since 1977 at the Centre has been very short. It is pertinent to mention here that within a span of barely ten years since 1989, there have been five Coalition Governments at the Centre with six Prime Ministers.

Coalition Governments in Kerala

The history of coalition politics in Kerala is the best example to analyse the imperative of evolving a workable coalition culture. Kerala has had a succession of Coalition Governments for long, with most of the Governments lasting their full term. In fact, Kerala has two distinct coalitions—the United Democratic Front (UDF) and the Left Democratic Front (LDF)—which alternatively forms the Government after the elections, with the people extending their support to the rival coalition in alternate elections.

It is clear from the above survey of the working of the Coalition Governments that the experiment of coalitions at the Centre has not been very encouraging. In most cases, the Coalition Governments failed to adopt any clear-cut policies. Most of the time, these Governments had to make compromises and failed to take any concrete steps or actions because they were more concerned with their existence and survival rather than implementing programmes or policies. The internal bickering and political strifes among the members of the coalition also contributed to the instability of the Government which adversely affected the efficiency of the administration.

Generally, the coalition is thought of when no single party is able to muster a clear-cut majority. The parties are then obliged to seek support and co-operation of other groups to form the Government. Sometimes, alliances are formed before the elections and a number of parties come together and chalk out a common minimum programme and contest elections. This type of arrangement has an obvious advantage. Sometimes, two diametrically opposite parties with different ideologies get together to form a Government after the elections and in many of these cases, the Government may not survive for long, leading to instability.

Some Suggestions

To ensure a certain degree of stability of the Coalition Government, the role of the President is very significant. For a coalition system to succeed, the President also should play a more constructive role in the process of Government formation, especially where there is no clear majority of any political party. We should consider proportional representation system with single transferable vote which is being practised in France and Germany as against the current first-past-the-post system.

We should encourage pre-election alliance rather than post-election coalitions. Some effective steps may also be taken to reduce the number of political parties. Further, defections should be completely banned.

PARLIAMENTARY VERSUS PRESIDENTIAL SYSTEM*

Indar Singh Namdhari

Introduction

India remained under the colonial rule of England for a long time before attaining Independence on 15 August 1947. The Constituent Assembly, after a great deal of deliberation, decided that a parliamentary system of governance should be established in India. Without going into the factors underlying this decision taken by the Constituent Assembly, it can be said that the founding fathers of our Constitution were influenced by the parliamentary system of governance that was being followed in England—popularly known as the Westminster model of governance. Under this system, the powers of governance are vested in the Parliament and it is regarded as the sovereign governing institution. There is a saying in England that the Parliament of the country is capable of doing anything except turning a woman into a man and *vice versa*. Besides, impressed by the system followed in the USA, the principles of separation of powers amongst the three organ of Government and checks and balances were adopted in our system too. Thus, our governing system, despite being based on the British model of parliamentary system, has not exactly been similar to the latter. The good features of governing systems of various countries have been incorporated into our system.

Separation of Powers

Insofar as the principle of separation of powers is concerned, separate responsibilities, rights and functions have been entrusted to the three organs of Government, *viz.* the Executive, the Legislature and the Judiciary under the Constitution. On the other hand, the rights and duties of the Central and the State Governments have been differentiated through various Lists, *viz.* the Union List, the State List and the Concurrent List included in the Seventh Schedule of the Constitution. However, despite that, the governing system of the country is not guided strictly by the principle of separation of powers. Though the President as the Executive Head occupies a pivotal position at the Centre and the Governors enjoy the same position in the States, their actual position is not more than that of a Constitutional Head. There have been instances in the history of Indian politics when some Presidents have had differences of opinion with the Central Government on specific issues and their word was respected; still, in reality, the powers of governance are concentrated in the hands of the Council of Ministers and its Head.

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*This is a translated version of the original article received in Hindi.

Earlier, the Parliament of Britain was said to be having the actual power of governance and, in fact, it was like the ruler. Some critics have termed the governing system in England as 'parliamentary dictatorship'. With the passage of time, there has been a decline in the powers of the Parliament. Intially, the powers started getting vested in the Council of Ministers and finally powers were concentrated in the hands of the Prime Minister as the elections began to be contested under the party system with each party projecting one of its candidates as the probable Prime Minister. At present, the decisions taken by the Prime Minister are generally supreme. Members of Parliament, bound by party discipline, are unable to oppose the policies of their leader even if they wish to do so. In fact, this system, under the cover of Constitutional provisions of parliamentary democracy, is very much like the Presidential system of governance and sometimes even more powerful than the latter. While, under the Presidential system of Government, the President is not in a position to impose his decisions on the Legislature, in the parliamentary system, the Prime Minister or the Council of Ministers is the *de facto* Executive that exercises all the powers of the Legislature. Such a situation has arisen under our system as well with the Head of the Council of Ministers dominating the Parliament.

Parliamentary Versus Presidential System

While comparing the Presidential system with the parliamentary system of governance, we shall have to pay attention to some important points. India is a land of diversities and its present structure owes its existence to the tireless efforts made by Sardar Patel for the merger of scores of Princely States with the Indian Union after the British rule came to an end. While determining the system of governance, though we had adopted the principles of federalism, we did not regard ourselves as a 'Federation'. Instead, we coined the word 'Union' for our political dictionary and stated in the very beginning of our Constitution that "India, that is Bharat, shall be a Union of States." After having gained Independence from the British, the founding fathers of our Constitution had in their minds the vision of a strong Central Government and they were also aware of the responsibility of meeting the requirements of various State units. To achieve that end, we included three Lists in the Seventh Schedule of our Constitution. The power to make laws with respect to the matters included in the Union List was vested in the Central Government and the responsibility of discharging this function with respect to the matters enumerated in the State List was that of the State Governments. The power to make laws with respect to the Concurrent List was vested in both the Governments. However, a provision was made that in case of any inconsistency between the laws made by the State Government and the Central Government with respect to matters enumerated in the Concurrent List, the laws made by the Parliament shall prevail. The exclusive power to determine policy with respect to any matter not included in these three Lists has been vested in the Central Government. Such a step taken by the founding fathers of our Constitution was highly appropriate from the point of view of strengthening the largest parliamentary democracy of the world.

Post-1967 Scenario

There has not been any controversy in this regard for a long time, the prime reason for which was that prior to the 1967 elections, the Congress was in power at the Centre and in all the States. After the elections held in 1967, for the first time, non-Congress Governments were formed in six States of the country. Since then, there has not been any occasion when a single party came to power in all the States of the country, including at the Centre. Differences of perception existed among the leaders on several issues after Governments having different ideologies came to power in the States and at the Centre. For example, the Central Government has the power to decide on the royalty on minerals. However, this issue has been raised several times by the Government of Bihar, especially by the Janata Dal and the Rashtriya Janata Dal led Governments. The clash of ideology has been the main reason behind this controversy, rather than the interest of the State. Demands had also been made by non-Congress Governments of several States for more autonomy and more powers to States when the Congress was in power at the Centre and by the other parties, especially when the BJP led coalition came to power. Such opposition has not been very vocal so far, but it is difficult to say if the situation will remain the same in the future as well. Actually, this is happening because separation of powers between the States and the Centre has not been proper and the powers have not been defined properly under the parliamentary system. In fact, the separation of powers in this country of diversities should be a well considered one and decentralisation of powers should be done in a logical and scientific manner. It is rather unfortunate that leaving aside the people associated with politics, if any other prudent person expresses such views or tries to take an initiative in this direction, he is dubbed as revisionist and anti-establishment, and is marginalised.

Demand for Creation of New States

There are several other countries in the world, which are bigger than India in terms of area. Our country is the second most populous country in the world. Our large population comprises people belonging to various religions, castes, cultures, linguistic groups and dialects. Kerala and Kashmir are completely different from the cultural point of view. Here, the sentiments, ideologies and expectations of the people change due to inherent diversities. States have been reorganized because of such diversities. The province known as Madras in the pre-Independence days now stands divided into Andhra Pradesh and Tamil Nadu. The single State of Assam has been divided into Meghalaya, Nagaland and Assam. Bombay stands divided into Maharashtra and Gujarat. Erstwhile Punjab is now shown on the map of India as two separate States of Punjab and Haryana. With the constitution of Chhattisgarh, Uttaranchal and Jharkhand in the year 2000, the number of States in our country has gone upto 28, but still demands are being made by the people of some areas for the division of their States and creation of separate States. The demands being made for new States like Telangana, Vindhya Pradesh, Harit Pradesh, Gorkhaland and Mithilanchal are of this nature. Lop-sided and unbalanced development and non-recognition of regional identity and self-respect have been some of the main reasons for the demand as well as the creation of new States. Political parties raising such demands in the Legislatures, including in the Parliament, have not been successful as they are ignored by the ruling parties because of their numerical strength. Carving out of Jharkhand from Bihar has been the culmination of the pressure tactics—otherwise the top leaders of the State had turned down this demand several times. Such demands are made due to developmental imbalances but delving deep into the reasons as to why development is lop-sided and unbalanced, we will find that the representatives of the people from the larger areas of the State do not undertake welfare activities in those areas which are dissimilar to theirs due to one or the other reason. This gives rise to resentment in the neglected areas. The majority party in the Legislature and its leaders keep on suppressing this resentment. Since the majority party forms the Executive and is also in command of the Legislature, it tends to ignore the sentiments of the people from backward regions. The voice of the people from these regions is often a cry in the wilderness. In such circumstances, it is felt that the Presidential system of governance is much simpler, useful and effective as compared to the parliamentary system.

Need for Balanced Development

The main sources of revenue generation are mostly under the control of the Central Government. The Union Government disburses financial grant to the States every year. Not only that, the Annual Plans of the States and their funds are also determined by the Planning Commission constituted by the Central Government. Whether it is the Congress or any other party or a coalition which is in power at the Centre, all political parties—be they in the Opposition at the Centre or in power in a State—usually level allegations that the Central Government follows a policy of discrimination in the matter of determining Plans and sanctioning grants. To some extent, such allegations levelled hold water. Otherwise, there is no reason why economic development took place at a rapid pace in some States while some other States lagged behind. This tendency was noticed in the case of setting up of large undertakings and institutions of the Union Government. There are only a few IITs in such a large country like ours. The same has been the situation in the case of Central Universities. While some States have two to three Central Universities, some other States have none. The same holds true in the case of health services as well. All these lead to a developmental imbalance in the country. Take the case of Railways, banks, other public undertakings and major projects, and one will find that the headquarters of two or even three of these organisations have been set up in a few States whereas there is not a single headquarter in some large States. Most of the Damodar Valley Corporation (D.V.C.) projects are located in Jharkhand but their headquarter is in West Bengal. Jharkhand is facing the inconvenience of the absence of a headquarter despite having a number of projects. One major reason for this is the factor playing in the back of the mind of the top leadership that the candidates of their party have not been elected in sufficient number from that particular State, hence it should be deprived of facilities. If we had the Presidential system of governance wherein the President is free to take a decision, such a thing would not have happened because in that case the Head of the Government would not have been concerned about going into the nitty-gritty of party strength in the Legislative Bodies.

Political Stability : A Pre-requisite for Progress

A very disappointing position emerges before us when we evaluate our system of governance in the present context. More than three centuries have passed since the establishment of this system of governance in

England which is known as the mother of modern democracies. In the parliamentary history of England spanning over 315 years, there has not been even a single occasion when more than three parties have contested the elections whereas in the parliamentary history of India spanning just over 50 years, there has never been an occasion when such few number of parties have contested elections. An argument is advanced that it is essential to have more alternatives in order to elect the best, but the voter appears confused while electing the right person from amongst the large number of parties. In 1952, while 51 recognised parties contested the Lok Sabha elections, 20 parties got represented in the House. The number of parties contesting the election and winning the election in 1957 was 46 and 18, respectively. This number was 43 and 22 in 1962; 45 and 22 in 1967; 47 and 20 in 1971; 23 and 15 in 1977; 32 and 17 in 1980; 30 and 17 in 1984; 32 and 24 in 1989; 36 and 25 in 1991; 38 and 30 in 1996, respectively.

In 1998, the number of recognised parties contesting the election was 37 and all of them were represented in the Lok Sabha. Following the election in 2000, as many as 38 political parties were represented in the Lok Sabha. Subsequent to splits in a few parties, this number has gone beyond 40. Similarly, the number of national parties, State level parties and registered parties contesting the election was 53 in 1971, 62 in 1977, 36 in 1980, 33 in 1984, 117 in 1989 and 161 in 1991. 209 parties contested the elections in 1996 and this number came down to 176 in 1998. 67 parties fielded one candidate each in the 1996 elections. When we think of model parliamentary practice, the situation appears to be quite bewildering. So far as the question of formation of Governments is concerned, the Congress enjoyed absolute majority at the Centre before 1977. For the first time in 1977, various parties joined hands to form the Janata Party but it failed to command absolute majority and the Government was formed with the support of other parties. A split in the largest constituent party, *i.e.* the Janata Party caused the fall of the Government. After Shri Morarji Desai resigned, the Government was formed under the leadership of Chaudhary Charan Singh with outside support extended by the Congress. However, the withdrawal of support by the Congress resulted in the fall of his Government, that too when it had not faced the Lok Sabha even for a single day. The same game was played by various parties in 1989, 1990 and 1999 as well. Without going into the details of the extent to which some parties emerged as honest and dishonest players in this game, it can be said that this has led to instability in the country and the confidence reposed by the people in the politicians is also shaken. This certainly is not in the interests of the country.

Need to Curb Money and Muscle Power

Religious considerations, casteism and money and muscle power have spread their tentacles in this country. Persons having criminal background have been elected to the Legislatures on the basis of their muscle and money power and the election procedures have been tainted. Large funds are being misused and squandered on elections and at times, one is left stunned to know the figures of the expenditure incurred during elections. The figures furnished by each candidate to the Election Commission with regard to expenditure incurred is much below the amount fixed by the Commission. It is as if one had to resort to falsehood in the very beginning of one's participation in the electoral process. Those elected on the basis of muscle and money power wish to recover the amount of their investment and thus begins the process of bargaining for power. Hence, to visualise a capable and clean administration in these circumstances is nothing but a daydream. If we continue with this system any longer, our prejudices will perhaps keep us confined to the stranglehold of various pressure groups and we will witness the emergence of a Parliament which will be pulled in different directions by different powers. Needless to say, the consequences will be disastrous.

Conclusion

Political parties are formed in countries such as England on the basis of broad political ideology. Consequently, fewer parties have been formed there. People have formed parties based on different ideologies in our country. A split in the parties following a clash of political interests, formation of new parties and formation of coalitions at times with a view to teaching a lesson to others are inimical to our democracy and hinder our socio-economic development as well. Under the present multiparty system, not a single party has been able to command majority in the Lok Sabha in the last five General Elections. During a period of 48 years, there have been as many as 13 General Elections which should have otherwise taken place in 65 years. Participation in governance without any responsibility by extending support to a Government from outside is perhaps a new 'innovation' in Indian democracy. The present Central Government also depends on the support of around two dozen parties. Such Governments work in an atmosphere of uncertainty. Hence, at times it is not possible for them to take drastic decisions in the interest of the nation. The head of such a Government has to go in for so many compromises with so many groups and interests to run the Government that he appears to be totally helpless. In such circumstances, when we feel the need to have a strong Centre and take into account the development of the entire nation, it seems that parliamentary system of governance does not meet our requirements. There is one more flaw in this system which is that sometimes it is not possible for a person possessing all the good qualities to be elected as a leader because only that person becomes the Prime Minister who emerges as the favoured candidate on the basis of the support of the majority of members of Parliament. Under this system, a person possessing all the good qualities and popularity throughout the country is ignored at times. Just as the rivers forget their own existence when they merge into the sea, similarly people belonging to minority castes or religions or creeds will have a feeling of greater participation in the system of governance if we adopt the Presidential system. Hence, it is essential that an elected President on the lines of the system adopted in the United States should be the Head of the Government and there should be a clear demarcation of powers among the three organs of Government and also between the Centre and the States. There should also be a powerful Legislature and autonomous State units capable of undertaking the challenging task of socio-economic transformation of the country.

TERRORISM, DEMOCRACY AND FREE PRESS

Bhishma Narain Singh

Introduction

The terrorist attack of 11 September 2001 on the citadels of America's economic and military might and the U.S. response in the nature of the launch of a global campaign against terrorism have ushered in a new era in international relations. India has been stressing that terrorism is a crime against humanity. The motive and objective of the terrorist attack on the U.S. and that on the symbol of Indian parliamentary democracy on 13 December 2001, have been the same. It is a fact that the alertness and bravery of the security personnel in the Parliament Complex who fully deserve nothing but our praise, played an extremely important role in minimising the damage. It is a wake-up call to the international community to face the challenge of terrorism.

Terrorism and its Causes

Terrorism has been and continues to be a global threat. Since the dawn of human history, conflicts between groups, and between the established political order and its opponents, with the help of available means of offence and defence—have been a constantly recurring feature. Terrorism has been a long-standing problem plaguing a number of countries. Several countries in East Europe are witnessing terrorist activities. The Balkan States and some of the C.I.S. States have also fallen prey to this malice since some time past. The terrorist attacks in Israel and Palestine are showing no signs of abatement. Some countries in the African continent are also faced with the problem of growing terrorism. The problem is present in varying degrees of virulence in several countries of Asia and Latin America.

The availability of sophisticated weapons to the militants has made the problem more difficult. Some of these groups have sympathy and active support from linked groups and collaborative Governments of the neighbouring countries, which is against all norms of international morality and ethics. The terrorist incidents of 11 September 2001 and 13 December 2001 have further compounded the problem because of the techniques adopted by the terrorists.

The main causes of the rise of terrorism are basically three, *viz.* sub-nationalism, ethnic conflict and economic imbalances. While dealing with the evil of terrorism, it would be preposterous to associate terrorism with any religion. Sub-nationalism, in its extreme form, is as harmful for the internal fabric of nation state, as extreme nationalism is for the maintenance of healthy and amicable relations with other countries. The demands of sub-nationalism are mostly based on ethno-political considerations. Most of the nation states and Governments are today organised around the concept of pluralism. Their populations are multi-ethnic. The extreme manifestation of the phenomenon of sub-nationalism is threatening the very basis of ethnic pluralism and disturbing the demographic balance of the nation states.

Terrorism in India

The dimensions of the scourge of terrorism in India need no dilation. The North-Eastern parts of the country were overtaken by armed militancy with strong under-currents of secessionist demands since immediately after Independence. Punjab also passed through a difficult period of virulent militancy. The scenario in Jammu and Kashmir has been causing serious concern and anxiety among all right-thinking people.

In India, besides the factors of ethnicity, tribal consciousness (India contains a large population of tribals) and diversity of religious consciousness and the caste-community syndrome (which has emerged conspicuously during the last decade) are some of the other dimensions of the problem.

Indian Constitution and Conflict Resolution

The founding fathers of the Indian Constitution had almost a prophetic vision of the problem. The Constitution embodies a scheme for conflict resolution and maintenance of a cohesive balance between the interests of diverse groups and communities in India. It recognises and offers a solution for the problems of sub-nationality and ethnicity. Conferment of Fundamental Rights to the individuals as also collective rights relating to cultural and educational fields in articles 25 to 30 are available to religious groups and minorities. The federal structure, with the Union as the apex binding force and conferment of autonomy to States with a balanced pragmatic division of power, represent an ideal structure which, if implemented, in letter and spirit would, to a very large extent, resolve or minimise the differences and preserve the unity as well as identities of all sections of the Indian population. Schedules V and VI of the Constitution embody a framework for resolution of conflict and preservation of history, customs and traditions of the tribal groups.

The starting point of my suggestions for the solution of the problem would be an emphasis on the recognition of the intrinsic value of these constitutional provisions by all concerned and their implementation with sincerity, in letter and spirit. For this to be achieved, education of the people is absolutely necessary. In the changing times, we have forgotten the basics and a stage has come when we have to uphold the time tested values consciously and let the people know that we are doing so with a sincerity of purpose and without discrimination.

Ending External Support to Terrorism

My next point for emphasis would be the regulation, control and complete eradication of the phenomenon of external support to terrorism. The decisions at the Bandung Conference and the principles of *Panchsheel* put forth before the international community by our first Prime Minister Pandit Jawaharlal Nehru and reiterated before the international fora by successive Prime Ministers need to be accepted in the true spirit by the international community. So far, regrettably, the acceptance has been halting and some times even the U.N. bodies have been criticised for partiality. All this has to go if we have to have a world free from terrorism and militancy which are the greatest threats to the society.

Need for Co-operation

At the politico-administrative level, I must admit that our approach has been *ad hoc* and mostly confined to "fire fighting". There is a need for urgently reviewing the situation in the country and pin-point the reasons for insurgency and the specific root causes in each area of insurgency and potential unrest. While most of the ground action may be through the State Governments, the Union Government should be alive to the situation by remaining in constant touch with the States and by almost day-to-day review of the situation.

Democracy and Terrorism

It would neither be far from the truth nor an exaggeration to state that terrorism is the very negation of democracy. The essence of democracy is tolerance and goodwill towards fellow citizens. Democracy also allows plurality of cultural forms, political views and yet a strong and determined will to work for the stability of the nation. Mahatma Gandhi did not appreciate taking to arms even for liberating the country from alien rule. Indian democracy, which has its strong roots in the Gandhian values of non-violence and the ethical norms which were further nurtured by Pandit Nehru's doctrine of *Panchsheel* and Non-alignment, should not depart from the traditions and values of democracy. It is rather unfortunate that terrorism has raised its ugly head in several parts of the country and it should be the endeavour of all of us to confront these evil forces with all the will and determination at our command.

Mobilising Public Opinion and the Role of the Media

The greatest bulwark against terrorism is a strong public opinion. The need of the hour is a vigorous campaign on all fronts for the deep involvement and participation of diverse ethnic groups, minorities and classes in the task of upholding democratic values. It should be our endeavour to make the greatest effort to enlist their conscious and active participation in the mainstream of the country's political life and its socio-economic progress. This is a matter which, in my opinion, is beyond party consideration, beyond religious and caste differences and class considerations. The Press and the media can play a great role in educating the people on the inherent contradictions between democratic values and terrorism and highlighting the damage done to the national solidarity by terrorism and the sufferings brought to the affected people in its wake. Terrorism arises due to a mental block among those who perpetrate it and it creates fear psychosis among those who are its victims. The Press and media should be a great help in removing these mental blocks and fears by striking at the very roots of this phenomenon.

I am a firm believer in the dictum that a Press worth its name should be a free Press. A gagged Press and media is doubly harmful for the nation. It rouses an avoidable feeling of suspicion all around and it also goes against the very grain of democratic spirit which ensures freedom of expression to all.

Nevertheless, let me make it clear that freedom does not amount to license. Like all responsible organisations and institutions, the Press has to work in a system of autonomous self-regulation. There is a limit to the exercise of every right in a democracy. The limit is determined by national interest and "the greater good of the greatest number."

Conclusion

We have to guard against the looming danger before India and other democratic countries of the world, thrown up by the rising waves of terrorism which threaten the very existence of not only the democratic system of Government but even the roots of civilization. A balanced exercise of democratic rights and free expression of one's views in a free, frank and fearless manner are absolutely essential for the march of the global community towards progress, peace and prosperity.

TERRORISM VS. DEMOCRACY

Varkala Radhakrishnan

Introduction

The Fiftieth Anniversary of the Parliament of India on 13 May 2002 will be remembered by the future generations as celebrations of an institution which brought about changes in the political, social and economic structure of the country. It is also significant to note that the terrorists attacked the Parliament House on 13 December 2001. Terrorism has grown to such an extent that the civilised world has to forge an alliance of all the nations to fight this evil. The immediate provocation for such an alliance was an assault by Taliban terrorists on 11 September 2001 on the World Trade Centre in New York and the Pentagon in Washington. The entire world condemned the terrorist attack in which thousands of lives were lost and irreparable damages inflicted on the US.

Terrorist Attack on the Indian Parliament

The terrorist attack on the Parliament House on 13 December 2001 shocked the entire nation. Coming as it was on the very bastion of our democracy, it was a ghastly attack on the elected representatives of the people of India. It was abundantly clear that it was a barbarous attack aimed at wiping out the country's top political leadership. It is because of the prompt action by the security staff that a national disaster was averted. The security staff who lost their lives in the action will be remembered for ages to come. When we speak of the Fiftieth Anniversary of the Indian Parliament, we must also remember the supreme sacrifices made by the security staff to save the edifice of the Indian polity.

The time of the terrorist attack on the Parliament House was significant. The House was to meet to discuss the Prevention of Terrorism Ordinance (POTO). I had moved a resolution for disapproval of the Ordinance under sub-clause 2(a) of article 123 of the Constitution. There were elaborate discussions about the impact of the POTO in the media and in the Press. There were reviews expressed for and against the Ordinance. The terrorist attack took place when the Ordinance was in force. The severity of the

POTO did not come to our help to prevent the terrorist attack on the Parliament House. The banning of several fundamentalist organisations too did not prevent the shocking event.

Legislations to Contain Terrorism

India has been a victim of terrorism for decades. We had enacted the Terrorist and Disruptive Activities (Prevention) Act (TADA) in 1985. After the lapse of the TADA, no proceeding could be initiated under the Act. The Government brought a new legislation, namely, the Criminal Law (Amendment) Bill in 1995 which was introduced in the Rajya Sabha and is still pending. The POTO was issued in October 2001 to contain terrorism. Under the provisions of the Prevention of Terrorism Ordinance, the Government had banned a few Kashmiri terrorist groups. The said action also failed in preventing the attack on Parliament. The root causes of terrorism are manifold, including intolerance and injustice, economic exploitation, religious bigotry and the like. To address this threat of terrorism, we should start a movement for developing a culture of mutual understanding and consensus among the people at large, rather than solely resorting to draconian laws. Our past experience makes it abundantly clear that the POTO will not be of much help in preventing terrorists acts. The inherent weakness in our criminal investigation scheme should be thoroughly checked. If we take effective steps to revamp the system, we will definitely be able to meet the challenge posed by the terrorists.

But the POTO can never be the only remedy. The crime investigation and the intelligence agencies are doing their work promptly. Any lapse on their part will be suicidal. The attack on the American Centre in Kolkata on 22 January 2002 is a glaring example of the inadequacy of modern techniques available to our investigating agencies. So, the parliamentarians should evolve a comprehensive scheme for facilitating effective investigation. We should also seriously consider evolving political consciousness and social awareness to meet the challenge of terrorism which is a global menace. The violation of human rights in any manner will only aggravate the problem. Therefore, it is essential that terrorism be effectively checked by collective action and not by stringent police action alone. Let us strive for a world order free from terrorism so that people can live in peace and tranquillity.

INDIA'S FEUDAL DEMOCRACY

Inder Jit

Introduction

We Indians take great pride in calling ourselves the world's largest parliamentary democracy. Our democracy has, no doubt, survived 55 years of freedom while many others have fallen by the wayside following Independence. Nonetheless, one fact stands out. We have reduced our system to what I call a feudal democracy. *Prima facie,* my description may appear to be a contradiction in terms. No set-up can be both feudal and democratic at the same time. However, it reflects the harsh, unpalatable reality. Democracy has become for us an end in itself, instead of being a means to an end: the well-being, happiness and glory of our people. Today, we have merely the outward trappings of a parliamentary democracy—periodic general elections, Parliament, a Cabinet and Civil Services, etc. Its functioning is feudal, unashamedly feudal.

In 1947, under the leadership of Mahatma Gandhi, we decided to rid our system of its feudal past, calculatedly nursed and encouraged by our colonial masters. When freedom dawned, we swore to place country before self, family, community and party—and make India a secular, casteless and classless society. Yet, we as a people have become more communal and caste-ridden today than ever before. Some three decades ago, we even applied the underlying principle of Pakistan in free India to carve out a Muslim majority district of Malappuram in Kerala on the basis of religion. Witness the recent elections to the Assemblies of UP, Punjab, Uttaranchal and Manipur. Never before has the communal and casteist cards been played more brazenly. We have many more classes today than ever before. One more class of pampered life peers was created some years ago by the then powers that be without any qualms of conscience—that of ex-Prime Ministers with enviable and wholly unjustified privileges, which cost the taxpayers crores and crores of rupees.

There is no place for feudal lords in any healthy democracy. However, we have today many more Jagirdars, Rajas and Maharajas, even as those dethroned and democratised in 1947 have risen phoenix-like from the ashes.

Genes, family ties and dynasty count infinitely more today than merit, probity, selflessness and record of service. Witness the elevation of Sonia Gandhi to the Presidentship of the Indian National Congress, which led India to freedom, and to the Chairmanship of the Congress Parliamentary Party without any earlier involvement or experience of politics or public life.

Take the Centre. The Prime Minister is no longer merely the first among equals. He is now the supreme boss, even Godfather. The country is ruled today not by the Union Cabinet in the true sense of the term, but by the all-powerful Prime Minister's Office. A new myth of the Prime Ministerial prerogative has been created and promoted ignoring even the constraints and compulsions of a Coalition Government. Like the Kings of yore, the PM is now widely viewed as one who can do no wrong—and is above the law, barring sheer bad luck. Institution after institution has been undermined. The bureaucracy has been largely corrupted and reduced to the position of courtiers through shrewd calculated use of the carrot and the stick. Top appointments are made and extensions given contrary to established norms on the basis of whims, fancies and personal loyalties. Anyone can get away with anything, so long as you have access to the right Durbar. In fact, as Aesop once said: "We hang the petty thieves and appoint the great ones to public office."

Strengthening Parliament

Parliament has been increasingly rendered irrelevant. The Lok Sabha met for more than 100 days annually during Nehru's time. In 1956, it even met for 151 days. This number has come down to less than 90 days. What is more, an aberration called the "Zero Hour" virtually reduces Parliament to zero, time and again. A crusade by some of us over the past three decades for strengthening Parliament's control over the Government led to the introduction of the Committee System, as in Westminster, in the Ninth Lok Sabha. But the Committees have so far failed to yield the desired results. They do meet and their reports are submitted to Parliament. But these hardly ever receive the attention they deserve. In the Tenth Lok Sabha, for instance, the Standing Committee of Parliament for the Ministry of External Affairs, chaired by Shri Atal Bihari Vajpayee, recommended at my insistence that a subsidy of more than Rs. 21 crore annually for Haj travel be stopped and phased out in a couple of years. The Committee's recommendation was that "while maintaining the services for the welfare of the Indian Haj Pilgrims travelling to Saudi Arabia at an adequate level, the Government should progressively reduce and eventually eliminate the element of subsidy on their transportation to and from India". I had argued that it was wholly wrong for a secular state to subsidise the travel of people belonging to a religious denomination. All agreed, including Syed Shahabuddin. Shri Vajpayee presented the report to the Lok Sabha thereafter. Shockingly, the total amount spent by the Government on subsiding Haj travel and related facilities has not been stopped so far. Instead, it has shot up to over Rs. 2,000 crore this year under the NDA Government, headed by Shri Vajpayee.

A Law for Political Parties

Sadly, the decline of our parliamentary democracy has taken place despite repeated pleadings—and warnings. Loknayak Jayaprakash Narayan advocated "a total revolution," realising that this was easier said than done. I recall pleading for the Gandhian approach of taking one step at a time through my weekly columns syndicated nationally through INFA (India News and Feature Alliance) and as a member of the Ninth and Tenth Lok Sabha from 1989 to 1996 from Darjeeling. I urged that initially we needed to direct attention to the basic foundation of a modern parliamentary system: political parties. Most of our parties are anything but democratic. Anyone can be thrown out any time. Indeed, if the truth be told, most parties today have willy nilly become private limited companies or private armies with their own war chests. They claim to work for the common man and the country when, in fact, they only seek to serve their personal and family interests and those of their coterie and comrades.

The German Experience

Specifically, I proposed a law for regulating the functioning of political parties, as in West Germany. My visit to Bonn in 1969 showed that this aspect of the West German System, among others, was both stimulating and basic to our urgent requirement. The founding fathers of the West German Basic Law (Constitution) recognised two substantive points. First, political parties themselves must function democratically before they could be expected to run the system democratically. Second, blind trust in the free play of forces could prove disastrous. It could amount to ignoring the bitter lessons of history as reflected in the emergence of Hitler and his Nazi fascism.

The Basic Law, adopted on 23 May 1949, provided political parties for the first time a proper position and function. It stipulated: (i) The political parties shall participate in the forming of the political will of the people.

They may be freely established. Their internal organisation must conform to democratic principles. They must publicly account for the sources of their funds; (ii) Parties which seek to impair or abolish the free democratic basic order or endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall decide on the question of constitutionality; and (iii) Details shall be regulated by federal laws.

Germany now has a full-fledged law governing the functioning of political parties (Parteienqesetz), in addition to the Constitution. This law has now become one of the most important guidelines to policy formation. It spells out the real functions of the parties as also the various elements of a democratic party organisation. These embrace *inter alia* its administrative structure from the grassroots to supreme bodies, its written statutes and programmes, regular party conferences, election of the party organs, including in particular Executive Committees, the setting up of party courts for arbitration and the rights to be accorded to party members. Expulsion from the party is only possible if a member deliberately infringes the statutes or gravely contravenes the principle and rules of the party.

Like me, two Chief Election Commissioners, R.V.S. Peri Sastri and T.N. Seshan found the proposal for a law to govern the functioning of political parties both exciting and fundamental. Peri Sastri enthusiastically agreed as I said: "Think for a moment how much better political life in India would be if only we had a law similar to the one in Germany. We would then have truly democratic parties and a healthy political system." He agreed there was no better way to stem the feudal rot and enable our democracy to survive. Subsequently, he set the ball rolling by getting the political parties to register and function in accordance with their democratic constitutions. In October 1994, Seshan tried to move further. He directed all of them "to constitute their various governing bodies and committees and elect office-bearers" within four months. But his direction was brazenly ignored. The Commission again asked the political parties to complete their organisational elections by 11 January 1997. However, some leaders openly questioned the Commission's authority and said 'boo' in its face.

Corruption and Criminalisation

Tragically, the erosion of democracy has led to an all-round debasement of character and values, greatly encouraging corruption and criminalisation of politics. Consequently, life in New Delhi's political world has become a conscious and continuous exercise in double talk, deception and brazen hypocrisy. Fond hopes of a new deal were raised when Atal Bihari Vajpayee took over as the Prime Minister. (Remember one of his poems is entitled *"Geet naya gaata hoon."* However, little has changed even though the new Government is led by the BJP, which loudly claimed to be a party with a difference. Most leaders still bemoan the collapse of values and the criminalisation of politics. Yet, some of their own actions have encouraged honourable men to indulge in crime and perpetrate a criminal fraud on the country. Ends once more justify the means, howsoever immoral and illegal, in the pursuit of power.

Take our Parliament and its two Houses—the Lok Sabha and the Rajya Sabha. Any Indian citizen, duly registered as a voter, can contest for membership of the Lok Sabha from any part of the country as the House of the People, like the House of Commons, represents the nation. (This enabled me, a voter in New Delhi, to be elected twice to the House from Darjeeling in response to a request from the Gorkha leaders.) But the same does not hold good in regard to the Rajya Sabha. Why? The Rajya Sabha as the Council of States is neither India's House of Lords nor the House of Elders, as many members pompously describe it. The House was designed to represent the States in keeping with the federal principle and, according to Nehru, required to function in its "allotted sphere." Its members are, therefore, elected by the Assemblies of the States constituting the Union of India. Not just that. The founding fathers of the Constitution were equally clear that only persons who were "ordinarily residents" of a State should be qualified to become members of the Rajya Sabha and enable the House to play its role as the Council of States well and truly. Over the years, matters have degenerated to a point where even top advocates of the Supreme Court and leading intellectuals, academicians and journalists have not hesitated to file false affidavits for getting elected to the Rajya Sabha from one State or another, howsoever abominably. Some among them have even attained top positions in Government. True, Seshan as Chief Election Commissioner objected to the election of Dr. Manmohan Singh to the Rajya Sabha from Assam in 1991 on the ground that he was not "ordinarily a resident" of Guwahati. However, the Supreme Court upheld the election of Dr. Manmohan Singh. An "ordinary resident", according to the Representation of the People Act, means "a habitual resident of the place" and "such a residence must be permanent in character and not temporary or casual." We need to face the harsh and unpalatable truth that the top leaders of all the national parties are guilty of having promoted criminalisation of our politics and our national life over the years by wilfully asking their favourites to file affidavits which they knew to be false, immoral and illegal and were seen to be so by the people at large. Merely because "everyone is doing it" is no justification.

Ultimately, we need to answer one basic question: What kind of an India do we want? True, we need good and able people in our Parliament. But this must be done in an honourable way, as shown by Nehru. At the same time, our top leaders need to atone for their sin against the Constitution and the country. They must ensure by common consent (perhaps through a Parliamentary Committee) that there is no place in the Rajya Sabha for anyone on the strength of a false affidavit. We must uphold the Rule of Law both in its letter and spirit if we are to save our system from rack and ruin and restore the people's faith in democracy. No nation can be built on lies and falsehood. The choice before us is clear: *Satya Mewae Jayatae* or *Asatya Mewae Jayatae.*

Scourge of Defections

A hark back to India's bad old feudal ways has also come in the way of our tackling the scourge of defections. Time was when people at large were shocked by defections. Floor crossing was angrily denounced as a fraud on democracy. Not any more. Today, even eyebrows are not raised. Indeed, there is no longer any sense of shame in cheating the voters and trading in turncoats. Self is allowed to be placed shamelessly before the party and country. Politics has indeed been reduced to a horrendous exercise in personal aggradisement with no holds barred.

An Anti-Defection Law was, no doubt, enacted in 1985 to end unabashed political opportunism by amending the Constitution and adding to it a new Schedule—the Tenth Schedule. This helped to put an end to *Aaya Rams* and *Gaya Rams* individually. A defector stood disqualified and lost his seat in Parliament or the Assembly if he voluntarily relinquished his membership of the party on whose ticket he was elected or if he voted or abstained from voting in the House contrary to any whip or direction. Nevertheless, defections have grown by leaps and bounds, thanks to a provision which permits splits and mergers. No punishment is attracted so long as a member defects in a group and the group represents a faction resulting from an ideological or policy split in the original political party, and so long as the group consists of not less than one-third of the members of such a Legislature Party.

Regrettably, our people's genius of driving a coach and six through any legislation has willy nilly reduced the Anti-Defection Law to a mockery. The Speaker of the Lok Sabha and the Presiding Officers in the States were expected to put an end to floor-crossings by upholding the letter and spirit of the law. Importantly, they were required to permit only genuine splits based on policies, programmes and ideological considerations.

Instead, some of them have interpreted the Tenth Schedule and their powers in a way that circumvents and thwarts the law and mainly subserves the interest of the rulers of the day and their power over the purse.

This happened initially in the Ninth Lok Sabha when Chandra Shekhar and 57 other MPs walked out of the Janata Dal, led by V.P. Singh, on 6 November 1990, claiming that more than one-third of the Janata Dal's 140 MPs had split in accordance with the Tenth Schedule. This occurred again in the Tenth Lok Sabha when 20 MPs of the Janata Dal, including Ajit Singh and Ram Lakhan Singh Yadav, walked out of the Parliamentary Party on 7 August 1992, claiming a split of more than one-third of the Janata Dal's total of 59 members. V.P. Singh sought disqualification of Chandra Shekhar and 57 other MPs on the ground that 25 of them had already been expelled on 5 November 1990, a day before the split. This, he contended, had brought down the residual strength of the group claiming to split to only 33, which was less than one-third of the Janata Dal's residual strength of 115 (140 minus the 25 expelled).

Rabi Ray, the then Speaker, however, chose not to go into "the legality of the expulsions" or whether the original Janata Dal as a party had met before the split in its parliamentary wing. Instead, he spoke of "several lacunae" in the law and "of claims and counter-claims" and decided in favour of Chandra Shekhar and others giving them the "benefit of doubt". Nonetheless, a question we must ask is: Was this fair?

Shivraj Patil, Speaker of the Tenth Lok Sabha, lamented about "some weak points" and "defects" in the Anti-Defection Law but he ruled that it was not the job of the Speaker under the Tenth Schedule to see whether a split had taken place in the original party or not. The Speaker was only required to ascertain whether the group consisted of not less than one-third of the memebrs of the Legislature Party. That was not all. Incredibly enough, later, he recognised a split within a split when Ram Lakhan Singh Yadav and seven others broke away form the original split by Ajit Singh and 19 others even though a decision on the latter's action was still pending. The Speaker, who took almost ten months to give his decision in the crucial matter, further ruled: "The matter has moral, legal and political ingredients, according to some. It is not easy to pass judgments in matters moral. Those who have to deal with matters on the basis of law have restricted scope to apply the principles of morality while deciding the issue. There may occur contradictions between the stands moral and the stands legal taken by the Parties. In such cases, as per the Rule of Law, the stands legal get the upper hand".

Tragically, the menace of defections has grown. Time was when legislators defected in ones or twos. Now they cross over in droves in the name of splits, most of which are shamelessly spurious and have little to do with the weighty logic of principled splits in the original party. What is more, many fears expressed by some of us in Parliament have come to be true. Apart from encouraging bogus splits, the perverse interpretation of the original intention has led to fragmentation of political parties and brazen corruption. It has also empowered Governors to engineer defections through remote control and play politics in the formation of Governments. All this has brought about a distressing turmoil and instability in our party system. Most leaders today see nothing wrong in bringing about splits in other parties in their single-minded pursuit of power and pelf. P.V. Narasimha Rao started with a minority Government in 1991. But, by the end of 1995, he had managed to secure a majority.

Where do we go from here? Candidly, the time has come to take a good fresh look at the existing law. It is not enough to penalize floor crossings by individuals. A new and simple legislation should be enacted to punish not only an individual defection but also group defection orchestrated behind the fig leaf of a split. All those who wish to change parties must be required by the law to seek a fresh mandate. Adequate allowance should, however, be made for honourable dissent. No scope should be left for buying or selling of legislators, or, for the party bosses to become dictators. All in all, political opportunism must not be allowed to play havoc with India and its polity any more. It must be snuffed out without further delay if our people are not to lose faith in the Legislatures—and, indeed, in democracy and the system itself. We have had enough of hypocritical jingoism.

Mahatma Ignored and Slandered

Most of our problems have arisen because we have forgotten the Father of the Nation and ignored his sane, earthy advice. We remember him ritually twice every year. Once on *Gandhi Jayanti*, October 2, and next on the day of his martyrdom, January 30. Top leaders visit the *Rajghat* and pay floral tributes to him. All publicly swear by him. Yet few, if any, mean what they say. No one has time to pause and ponder and go beyond ritualisms to do what is desperately needed today: some honest heart-searching. In fact, incredibly enough, the Mahatma was not mentioned even once in the historic resolution which both Houses of India's Parliament adopted at a Special Session in the Central Hall of Parliament to celebrate the Golden Jubilee of India's Independence—and remember with gratitude the great sacrifices made by the freedom fighters. What is more, no one even noticed this distressing lapse until I wrote an article in the *Hindustan Times* on 2 October 1997 entitled: "Golden Jubilee Celebrations—Parliament Ignores Mahatma Gandhi."

Sadly, our ruling classes today prefer Western ideas and ideologies more than ever before. They unwisely ignore our background, temperament and genius—and the fact that over the past few decades, some of the top thinkers of the West like Arnold Toynbee, J.B. Priestly, W.W. Rostow, John Kenneth Galbraith and Gunnar Myrdal have appreciated Gandhi's ideas and even veered round to the Mahatma's view: nations are not built with brick and mortar or Gross National Product (GNP), but the quality and character of its people. (Prof. Rostow and others have accepted the view that the "quality of life", as emphasised by Bapu, is infinitely more important than continuous growth in GNP or high consumption.) Gandhi, therefore, gave top priority to building our national character debased by centuries of slavery. But we have lost all we gained in the rat race for material progress.

Our troubles have mainly arisen from the vulgar and ostentatious life style of some of our Ministers, many MPs and MLAs and their brood. It was not without reason that Gandhi sternly advocated a simple, austere life for the Ministers. He knew that given the chance, our Ministers would turn into Maharajas. This, alas, has happened in most cases, creating no end of problems—and political instability. Every party worker today wants to become an MLA or MP and next a Minister. No other vocation yields bigger and quicker returns. Consequently, there is a reckless struggle for office in which no holds are barred. Honesty was once the best policy. It has ceased to be so today. Self is shamelessly placed before principles. Corruption and greed are rampant. Truth is at a heavy discount.

The Mahatma virtually outlined a code of conduct for the Ministers in his writings in the *Harijan* from 1938 to 1948. He wanted the Ministers to be watchful both of their personal and public conduct and said that "they have to be, like Ceaser's wife, above suspicion in everything." Offices must be held in the Government "in the spirit of service without the slightest expectation of private gain—for themselves or for their relatives or friends." There is a beauty and an art in simplicity, he said. "It does not require money to be neat, clean and dignified. Pomp and pageantry are often synonymous with vulgarity." As a practical man, Gandhi did not rule out appointments in the Government of those who were close to the Ministers or were related to them. Said he: "If the relatives or friends get any appointment, it must be only because they are the best among the candidates, and their market value is always greater than what they get under the Government."

Briefly, Gandhi also made the following suggestions: (i) Ministers should not live as *"sahib log"* nor use for private work facilities provided by the Government for official duties. (ii) Ministers should not be sensitive (to public criticism). They should take in good part even carping criticism. "The critics expect much more from these chosen servants of the people than from others in the way of simplicity, courage, honesty and industry." (iii) Ministers are of the people, from the people. Let them not arrogate to themselves greater knowledge than those experienced men who do not happen to occupy ministerial chairs. (iv) People often think nothing of not keeping a promise made; it must be kept at all cost. (v) The Ministers are the people's servants. They can do nothing against the express wishes of the people. "They will not stay in office a day longer than the people wish."

Tragically, the Mahatma was snatched away before he could get free India's new rulers to accept and practice his ideas. Sardar Patel, according to Jayaprakash Narayan, kept a watchful eye on the Congress organisation, Congress Ministers and also on Ministers' conduct during his tenure and "cleaned up with an iron hand whatever corruption he found." Nehru held to the tradition for years. But because he did not have the same hold over the Congress organisation as did Sardar, he "turned a blind eye to the proliferating opportunism, immorality and corruption." Not that he liked them, Jayaprakash Narayan clarified. But he often condoned "unethical conduct on the plea that if one was a capable worker or an able administrator his other faults should be overlooked." Lal Bahadur Shastri, during his spell of Prime Ministership, strove to remove those who were known to be corrupt. But India lost him within a short period—before he could curb rampant defections, power of money and rabid casteism, which have become the bane of our national life.

Little has been done thereafter to cleanse public life, establish healthy democratic norms, rebuild character and uphold basic values. On the other hand, matters have greatly worsened, touching a new, low in recent years. Our leaders today decline to go by Gandhi's ideas and advice on the plea that times have changed. But, in doing so, they forget that they cannot fool all the people all the time. Our people are now alert and watchful and judge the leaders not by what they say but by what they do. The answer, therefore, lies not merely in remembering the Mahatma superficially. A new style and outlook needs to be initiated at the top. As the *Gita* says: "Whatsoever a great man doeth, that other men also do. The standard he seteth up, by that the people go." Briefly, as India's first President, Rajendra Prasad, repeatedly emphasised: *Yatha raja, tatha praja!*

Degeneration of Indian Society

In one single generation, we have degenerated from a largely honest society to a dishonest polity. What is more, political corruption has lately come to be virtually legitimised, thanks to the diabolical, if outwardly fair, theory that the law should be allowed to take its own course. There is a world of a difference between what Mahatma Gandhi wanted and what the Ministers at the Centre and in the States and other powers-that-be have been advocating in recent years. Bapu, as I said earlier, desired Ministers and legislators to be "above suspicion in everything." However, all parties now take the convenient stand that they must be viewed as innocent until proved guilty. In other words, they needed to be above proven guilt, not mere suspicion. The true implication becomes obvious when one realizes that, barring miracles, it normally takes under our judicial system a generation to prove some one guilty in a criminal case and two generations in a civil case!

Letting the law take its own course does not absolve us of the basic responsibility of taking effective steps to combat corruption. In fact, what has come to pass over the years makes our responsibility even greater. Nowhere in the wide world is corruption as naked, unashamed, public and brazen. As B.K. Nehru, one of our eminent civil servants, stated some time back: "The governmental machinery is now fast becoming an agency not for serving the people, but for extracting money from them and distributing it to all those who exercise any kind of power... "No shame attaches any more to being caught. Witness how persons arrested and placed in custody gleefully look into TV cameras.

Nehru and Lal Bahadur Shastri showed serious concern about mounting corruption. Both favoured a comprehensive code of democratic functioning and set up the Santhanam Committee on Prevention of Corruption. A code for Central and State Ministers was announced by the Shastri Government in October 1964. This provided, *inter alia,* for furnishing to the Prime Minister/Chief Minister at the initial appointment and subsequently every year by a Minister, a declaration showing the details of the assets and liabilities and business interests of the Minister and dependent relations of his family. But this served at best the personal interest and politics of the Prime Minister or the Chief Minister, not the best interest of the nation.

Both Indira Gandhi and Rajiv Gandhi started off well rousing many hopes and expectations with their eloquent promises of cleaning up the system. But little was done. The Janata Government of V.P. Singh came forward with a Lokpal Bill. V.P. Singh also announced in the

Ninth Lok Sabha his acceptance of my suggestion during the debate on the President's Address that all MPs and Ministers must be required to lay a declaration of their assets on the Table of the House. But his Government had to resign before he could implement either. Rajiv Gandhi once again talked about battling corruption and bringing forward the Lokpal Bill. Yet, little came out. In the circumstances, the Deve Gowda Government earlier and the BJP-led NDA Government now deserve a hand for bringing before the Lok Sabha, a Lokpal Bill, which includes the Prime Minister within its scope. Regretably, however, it lacks much-needed transparency. It provides that "every MP shall furnish a return of all assets owned by him and members of his family before the Lokpal every year." Yet every MP should be required to make a public declaration of his assets by laying a copy on the Table of the House—and not merely furnish a return to the Lokpal. This would ensure availability, authenticity and accountability. Any wrong information would automatically attract privilege and punishment for telling a lie in the high temple of democracy and committing its contempt.

Indira Gandhi described corruption as a "world phenomenon" and said it was not peculiar to India. True, the problem of sleaze is global. The Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders at Havana in September 1990 adopted a resolution on corruption in Government. The Inter-Parliamentary Union has been debating graft since the 48th Inter-Parliamentary Conference at Warsaw in 1959. In fact, the 94th Inter-Parliamentary Conference at Bucharest in October 1995, which I was privileged to attend as a delegate from India, was devoted mainly to "Parliamentary Action to Fight Corruption and the Need for International Cooperation in this Field".

Nevertheless, many countries, unlike India, have exercised the required political will to combat corruption. Japan and South Korea have shown the way, eloquently and admirably. Two Prime Ministers have been forced to quit in Tokyo and three Presidents have been indicted in Seoul. All this has been made possible by a firm commitment to certain minimum norms of public morality. To mention only one more case, President Ershad was indicted and jailed in neighbouring Bangladesh. We need to establish healthy conventions whereunder any Prime Minister or Minister or the Leader of a party who comes under a cloud, namely suspicion, must go.

Conclusion

Free India has undoubtedly achieved much in its first 55 years. But much more needs to be done in the crucial areas I have endeavoured to spotlight. Above all, we must cry a halt to the continuing debasement of democracy and its various institutions designed to provide good governance and ensure probity, transparency and accountability. We need to go back to Mahatma Gandhi and all that he stood for. Democracy, we should remember again and again, is only a means to an end and not an end in itself. It must deliver and serve the best interest, happiness and welfare of our people. It is time to pause and ponder and not only think of today. We also need to think of tomorrow as statesmen and make a fresh beginning in the new millennium.

THE FUTURE OF DEMOCRACY

M.L. Sondhi

Introduction

We are, today, witness to a multiplicity of national crises and to unprecedented decay—and in some areas, even a breakdown—of the institutions of governance. A regime of incoherence and confusion prevails in the political life of the nation and the authority and legitimacy of every institution is increasingly undermined by the actions of the very individuals who control them, and were intended to defend them against such erosion.

The failure is not limited to a particular regime or specific branch of the Government, but is comprehensive. The political Executive, the Judiciary, the Legislature, and all branches of Government subsidiary to each of these, are equally afflicted, and it is no longer possible even to sustain the fiction that it is the one or the other that is 'more corrupt' or 'less efficient'. Indeed, even the variations that exist between different parts of the country—regarded as more or less backward, corrupt, unstable, or violent—are essentially a deferred movement along the same downward continuum.

Parliamentary Disruptions

This must, indeed, be a terrifying image for all of us who have an abiding faith in constitutional democracy and the Rule of Law. But optimism becomes difficult to sustain in view of the conduct of some of the highest institutions of the land. What can be said when the members of India's Parliament, the source from which the power of all other institutions flows, and in which the sovereign authority of the nation and its people is vested, choose to conduct themselves in a manner that delegitimizes this very institution in the eyes of the people? The disruption of Parliament in the recent past weeks shows how deep and urgent the institutional collapse has become as the actions of its members contradict and cancel out the very constitutional rationale of its existence. This is only the most recent episode in a Legislature that increasingly refuses to legislate, to debate critical issues of national interest, and to ensure that the business of Government proceeds under the critical scrutiny of its sovereign authority.

Systemic Decline

It is clear that in every sphere of public life today, the life sustaining link between morality and power is gradually getting severed. The gravest threat now comes, not from elements who are opposed to democracy or who challenge the authority of the established order from without, through revolutionary or criminal action, but from within the decaying system itself. As Alex Comfort has written in a different context, "We have now to contend less with a delinquent whose success and energy silence opposition than with the widespread incorporation of delinquent patterns of conduct into the actual structure and mechanism of society."[1]

Weakening of Political Leadership

Evidently, we are not the society we set out to be and the aspirations and objectives written into India's Constitution have failed, in significant measure, to be realized. Today, we are confronted with a paralysis of political decision-making in connection with life-and-death questions facing the country—and even a superficial observer of events on our borders both to the East and the West can assess the magnitude and disastrous consequences of this inability to act. Political power is passing progressively out of the hands of institutional government, and is becoming increasingly randomized. The lack of political leadership has relentlessly sharpened conflicts to the knife-edge of violence, and criminal and political terror are becoming pervasive. The constitutional structure itself is, in many parts of the country, on the verge of disintegration and the political processes that were intended to realize the will of the people produce aggregate results that do not correspond to the desires or 'common will' of any substantial part of the population.

Has democracy, then, failed us? There are many voices today, both to the far Right and the Left, that would seize upon this as the right answer. The truth, however, is that we have failed democracy—and the first and greatest failure has been that of understanding.

Failure of the Intelligentsia

Before assessing the character and magnitude of the problem, it is necessary to identify those who I believe are the most culpable in this context. It is true, of course, that politicians, bureaucrats and all others in public life have contributed to the reign of political illusion that dominates the national discourse; it is true, equally, that it is, eventually, the citizens of a democracy that must bear ultimate responsibility for the character of the regimes they inflict on themselves. But, as a social scientist myself, I must concede that among these, it is India's social sciences that have been guilty of a great abdication. The academic community has, in the main, reclused itself from research, documentation and reappraisal of issues relating to the more unsettling of contemporary events, and preferred to focus on relatively safe areas, meta-issues, and a range of purely polemical discourses within the context of the great 'systemic' debates of the Cold War. Most of these have been sufficiently distanced from the rough and tumble of current political upheavals and conflicts to be of little relevance to public policy. In doing this, the social science community has neglected a fundamental duty within the democratic framework—the creation of a continuous pressure of re-assessment that identifies the range of available policy options, and forces continuous correctives on the body politic even as the ongoing challenges and crises of governance unfold.

David Lyons observes, we must "remind ourselves of the rationales of our rules and principles if we do not want them to become ineffective dogmas."[2] The intellectual community in India has substantially failed to prevent the rules and principles of a vigorous democracy from lapsing, over time, into reductionist slogans and 'ineffective dogmas'. Over the past more than five decades, social scientists have played little role in defining public policy or in reforming the processes and practices of the various institutions of governance. It is this intellectual defalcation—certainly among a wide variety of other factors—that has led to the confusions that proliferate regarding the basic nature of democracy, and the range of actions that are prescribed and permitted within the scope of constitutional governance.

Future of Indian Democracy

One of the most devastating misconceptions, in this context, has been the idea of democracy in India as a sort of 'soft option' for governance; a system in which everyone can get what they want, with no one paying the price; one in which we can negotiate the future of vast regions in this country with terrorists and criminals, and that can give such men an honourable place in the State and national Legislatures, and still hope to uphold the Rule of Law in the country; a system that, as long as the quinquennial ritual of elections is in place, will secure all the concomitant benefits of a democracy, and fulfil 'collective aspirations' without any further effort or sacrifice on the part of the leadership or the masses; and finally, a system under which all freedoms are guaranteed in perpetuity once they have been enshrined in a written Constitution.

Nothing could be farther from the truth. Democracy, indeed, is the most difficult form of governance known to man, and one that demands the most extraordinary participatory effort from every citizen. Indeed, it is not even a particularly efficient form of Government and one needs to remind oneself of Winston Churchill's wry dictum that democracy is the worst form of Government, apart from all those others that have been tried from time to time. In the same vein, Churchill also commented that the best argument against democracy is a five-minute conversation with the average voter.

Those who fought for and built India's democracy were not unaware of these systemic failings, and long before Independence, Mahatma Gandhi wrote that, "it (democracy) will bring out the best and the worst in us."[3] He also wrote: "The risks of the experiment are admitted. There is likely to be impersonation. Unscrupulous persons will mislead the illiterate masses into voting for wrong men and women. These risks have to be run, if we are to evolve something true and big".[4] Here, then, lies the hope for the future of Indian democracy, and the reasons for many of our past and current failings. In the rough and tumble of quotidian crises, in the petty scramble for partisan privileges, in our misleading obsession with the politics of caste, of community and of charisma, we have lost sight of the greater goal "to evolve something true and big."

To restore the idea of, and quest for, this 'something' is the role of the nation's intellectual, political and economic leadership. It is a role that has obviously been neglected, and the checks and balances, the dynamism and efficiency, of the institutions and instrumentalities of democratic governance have gradually been eroded through our own negligence.

Conclusion

There is a great air of cynicism and despair in most contemporary discussions on India's public life. Such pessimism is barren. To fault the current or past regimes, individual leaders of political parties, the bureaucracy, the Judiciary or the Legislature, or any other institution of governance is both easy and fruitless. Systems far worse than our own have been lifted out of their internal collapse by the initiative, the commitment and vision of a handful of men, often drawn from the most unexpected walks of life. Lech Walesa and the Solidarity Movement that dismantled a brutal dictatorship and brought Poland to democracy have important lessons for the modern world and its obsession with the seizure and significance of the instrumentalities of State power. Adam Michnik, one of the leaders and ideologues of the Solidarity Movement proposed a reversal of the classic revolutionary strategy of seizing State power to effect desired social change. The Polish people, wrote Michnik, should simply ignore the State and proceed to live their own lives, take over their own destiny, and "live as if were free."[5]

It is an interesting notion, and one that places the burden of freedom and of democracy precisely where it belongs—on the people themselves, and among them, pre-eminently on men of ideas, who possess the courage of commitment that is needed to challenge an oppressive order, and to restore the dignity of man within a truly democratic framework.

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[1] Comfort, Alex, *Authority and Delinquency: A Study in the Psychology of Power,* Sphere Books, 1970, p.76

[2] Lyons, David, "Human Rights and the General Welfare", in Lyons (ed.), *Rights,* Wadsworth Publishing Co., 1979, p.11

[3] Gandhi, M.K., *"The One Way,"* which first appeared in the *Harijan,* 19 November 1939. Reproduced in B. Shiva Rao (ed.). *The Framing of India's Constitution: Select Documents,* HPA Publications, 1966, p.108

[4] *Ibid,* p.109

[5] Stavrianos, L.S., *Lifelines from Our Past: A New World History,* I.B. Tauris & Co. Ltd., 1990, p. 245, referring to Michnik's citation in J. Schell. "A Better Today", *New Yorker,* 3 February 1986, pp.47-67

THE FUTURE OF PARLIAMENTARY DEMOCRACY

Madhu Dandavate

In the 50th year of the Indian Parliament, it is worthwhile to review the working of parliamentary democracy and assess its future. This assessment will clearly demonstrate that our nation's resolve to prefer parliamentary democracy to Presidential system was an appropriate decision in the wider interests of the democratic process in India.

Constituent Assembly's Approach

The Constituent Assembly of India which framed our Constitution had carefully applied its mind to the problem of devising a democratic system, suited to the Indian genius. The two systems which were uppermost in the minds of the Constituent Assembly members were parliamentary democracy and Presidential system.

A serious debate has been initiated in recent times regarding the viability of parliamentary democracy and the Cabinet form of Government. The debate has been provoked more by the fear of political instability than by consideration of the intrinsic merits or demerits of the existing system of parliamentary democracy in which precedence is given to accountability over stability.

There are some politicians as well as analysts who are toying with the idea of Presidential system in which more stability is provided at the cost of parliamentary accountability. The Cabinet Minister, under such a system, need not be a member of Parliament; several decisions can be taken without the concurrence of Parliament and parliamentary accountability is reduced to a mockery. But the most serious consequence of the Presidential system is that whatever be the outcome of the Presidential system in developed countries, in developing countries of Asia, Africa and Latin America, the Presidential system has degenerated into some form of dictatorship. In search of elusive stability, India cannot afford to pave the way for such a dictatorship.

We must remember that the Constituent Assembly, even after the partition of India accompanied by mass violence and political instability, preferred parliamentary democracy to the Presidential system, because it gave precedence to accountability and not stability.

Aberrations in the Electoral System

Several distortions in the present system of parliamentary democracy have arisen not because of the inherent defects in the system. They stem from the aberrations and iniquities in our electoral system. Consider the emerging electoral scene since the elections to the Lok Sabha from 1952 to 1971. There were wide disparities between the votes polled and seats won by the ruling party and the Opposition parties. The picture that emerged was as follows:

	Ruling Congress Party		Opposition parties (combined)	
Year	% Votes	% of seats	% Votes	% of seats
1952	45	74.4	55.0	25.6
1957	47	75.1	52.3	24.9
1962	44.7	73	55.3	27.0
1967	40.9	54.4	59.1	45.6
1971	43.5	67.9	56.4	32.1

These figures reveal a wide disparity between the votes polled and seats won by the ruling and Opposition parties. The ruling party had a minority vote, but in view of the division of votes in the Opposition, there were *minority Governments at the Centre* even during one dominant party rule.

The wide gaps between the votes polled and seats won have nothing to do with the structure of parliamentary democracy. They are the outcome of the existing faulty electoral process which needs radical electoral reforms so as to ensure stability.

German Model of Elections

Two important aspects of the electoral process in Germany have led to more stability. The electoral system in Germany is a system of dual voting. Half the strength of the Parliament members is elected as in India on the basis of a single member constituency with candidates put up by parties as in India. The other half of Parliament is elected by the List System, under which each voter is required to cast two votes, one for a candidate as in India and through the other vote, the voter is expected to express his preference only for a party which he accepts. On the basis of a formula agreed upon by all parties, additional seats are allotted to every party on the basis of *party votes.* Thus, the seats won by each contestant party are upgraded. As a result, the wide gap between the votes polled and the number of candidates elected is substantially reduced. Through the List System, parties can induct in Parliament persons who are experts in different fields which can improve the performance of parliamentarians.

Another important aspect of the electoral process in Germany is the *state funding of elections of party candidates.* To simplify the process, in consultation with the parties, the limit of minimum percentage of votes polled by a party to qualify for state funding of party candidates in the previous elections is fixed. Those parties which were small ones and never expected to secure the minimum percentage of votes to qualify for state funding, developed a tendency to merge with large parties with whom they had commonality of approach and identical perspectives. This accelerated a new process of consolidation of like-minded parties, the fractured vote was avoided as only a few parties survived and a new polarization of parties emerged avoiding the proliferation of parties leading to a further fractured verdict at the poll, paving the way for the stability of parliamentary democracy.

Challenges before Our Polity

Inner Contradictions

The stability of parliamentary democracy does not depend merely on the theory of numbers in the Parliament and in the State Legislatures. The social and economic strains in society also contribute to instability of parliamentary democracy. While replying to the debate in the Constituent Assembly, Dr. B.R. Ambedkar, one of the founding fathers of the Indian Constitution, observed:

> On January 26, 1950, we are going to enter into a life of contradictions. In politics, we will have equality and in social and economic life we will have inequality... How long shall we continue to live in this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built.

As the architect of India's Constitution had rightly warned, the stability of parliamentary democracy will come not merely from a stable majority in Parliament, but from an environment in our society in which economic and social equality is ensured. Let it be realized that acute inequalities are the most explosive material that can blow up the edifice of parliamentary democracy.

Power to Grassroots

The system of democracy in a vast country like ours with a wide diversity of needs and resources can never be sustained if our structure of parliamentary democracy is top heavy with power and resources following a trickle-down theory from the top. What is needed is power emanating from the grassroots in a decentralized way.

When the initial draft of the Constitution was framed, there was no reference at all to decentralize Panchayati Raj Institutions. It is only when some devout Gandhians pointed out this lacunae to the President of the Constituent Assembly, Dr. Rajendra Prasad, Article 40 was introduced in Part IV of the Directive Principles of State Policy which stated, "The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

It was only the Constitution's 73rd Amendment Act 1992 that spelt out Part IX of the Constitution on panchayats. Despite this Constitutional amendment, the decentralized structure of parliamentary democracy still remains extremely inadequate. Besides, empowerment of women at all legislative levels is yet to be ensured through Constitutional amendment.

Who is Supreme?

In the history of parliamentary democracy, repeatedly a debate has been raised as to who is supreme. After various judicial pronouncements, there need be no controversy about this aspect. According to the structure of our Constitution, the people are sovereign in electing the representative Government, the Parliament is supreme in enacting laws and amending Constitution, but the Supreme Court is supreme in deciding whether the laws made and amendments introduced in the Constitution by Parliament are consistent with the basic democratic structure of the Constitution as so clearly stated in the *Kesavananda Bharati* judgment of the Supreme Court. This judgment has struck a delicate balance between the extreme positions taken in the earlier judgments. The Kesavananda Bharati judgment has really been a safety valve for people's liberties and the power of Parliament.

Our nation has realized this fact after the bitter experience of the national emergency that was declared in India in 1975. During the emergency, not only the civil liberties of the people were under attack but Parliament was used to make some unacceptable Constitutional amendments. The Rajya Sabha had adopted a bill that gave immunity from criminal prosecution to the President, Vice-President, Prime Minister and Speaker of the Lok Sabha in normal courts. It was a saving grace that this atrocious bill was not brought in the Lok Sabha for adoption. There could have been nothing more disastrous than placing these high dignitaries above law. But the thrust of the 42nd Constitutional Amendment was so obviously violative of the Kesavananda Bharati judgment that even those who had adopted these anti-democratic measures during the emergency realized that they won't stand the test of judicial scrutiny by the full Constitution Bench of the Supreme Court. As a result, in the new set-up of Parliament after 1977, most of the anti-democratic Constitutional amendment bills were unanimously withdrawn since they were in sharp conflict with the Kesavananda Bharati judgment.

Privilege : Instrument of Accountability

Since the Constituent Assembly preferred parliamentary democracy because it offers maximum accountability, it is of utmost importance for the parliamentarians to use the parliamentary device of privileges to ensure accountability of the Government in various fields. If the Ministers fail to fulfil the obligations of the provisions of the Constitution or of the laws formulated by Parliament, their lapses can be raised through the mechanism of privileges and the matter can be set right. I vividly recall a matter that had been raised in the Lok Sabha through a notice for the breach of privilege by a Minister. The case of a business firm which was alleged to have committed several irregularities was referred to the Monopolies and Restrictive Trade Practices Commission (MRTPC) by the Government. Though the Commission had already submitted its report about the business firm, as required by Section 62 of the MRTP Act, the report was not placed by the concerned Minister on the Table of both the Houses of Parliament within six months of the submission of the report. This was a clear breach of the MRTP Act. The issue was raised through a privilege notice and the Minister of Law and Company Affairs had to offer an apology to the House for his lapse, with an assurance to the House that in future all reports submitted by the MRTP Commission would be laid on the Table of the both the Houses of Parliament as required by the Act. The compliance of the provisions of law could thus be ensured through the device of privilege.

In this context, it is worth recalling the Mudgal case. There was a glaring case of corruption by Mudgal, a member of the Provisional Parliament in 1951. The matter was referred to an *ad hoc* Committee of Parliament which discovered that Mudgal was guilty of more corrupt practices than were mentioned in the privilege notice. The Committee recommended expulsion of Mudgal from the House. Prime Minister Jawaharlal Nehru moved the resolution proposing expulsion of the concerned member from the Parliament. The member resigned from the membership of the House. In a resolution, the House accepted the Committee findings and deprecated Mudgal's attempt to circumvent the effects of the motion expelling him from the House by his resignation which constituted a contempt of the House and aggravated his offence.

Accountability of Budget

If one scans the budgetary discussion for several years, it is found that 80 to 85 per cent of the budgetary Demands of various Ministries could not be scrutinized for want of time. It is during the discussion on the Demands of various Ministries that the working of these Ministries becomes accountable to the Parliament. When 80 to 85 per cent of the Demands is not discussed at all, accountability of the Ministries is reduced to a mockery. To correct this aberration, I continually pleaded for years for the appointment of Joint Standing Finance Committee of both the Houses of Parliament, which could fully scrutinize all the Demands of the Ministries and evaluate their working. Now Standing Committees for different Ministries are formed and their work has become just a ritual. After the Budget is presented in Parliament, a few weeks are taken by the Standing Committees to study the Demands and the working of Ministries for which the Parliament is adjourned. Both the Houses of Parliament take up the Budget discussion only after various economic and financial institutions, newspapers and economic journals, universities and economic institutes have already discussed the Budget threadbare. Thus, there is staleness in the debates in Parliament and hardly any fresh and innovative approach emanates from these discussions.

Fractured Verdict and Coalitions

After the first General Elections in 1952, India's experiment of parliamentary democracy was based on a pattern of one dominant party rule, for historical reasons rooted in the nation's freedom struggle. But gradually there was a shift in this picture. There was a proliferation of national as well as regional parties. This proliferation of parties was not so much on ideological and political grounds. The splintering of parties, personality based parties, emergence of regional parties in the absence of the failure of the national leadership to integrate legitimate regional aspirations with the wider national ethos, etc. coupled with the spate of unprincipled defections with defectors forming new parties of political groups, led to fractured verdicts in the polls. The verdict was so fractured that even the established national parties could not think of a coalition without the association of regional and sub-regional groups. As stated earlier, if a German model of electoral process is adopted, substantially reducing the gap between votes polled and seats won, and in addition if a system of state funding of elections as in Germany linked with a minimum percentage of votes secured by parties is introduced, the process of consolidation of like minded parties with the prospect of state funding for an enlarged consolidated party would definitely increase. The process of political polarization and consolidation would begin. The process will be undertaken by parties cautiously and yet the experiment of evolving a stable system of parliamentary democracy will gain momentum.

But even for this process to be consciously taken forward, for a few years, the experiment of coalitions is inevitable. However, a Coalition Government at the Centre which has to face national as well as international issues must have a commonality of approach and perspective. If the effort of each partner of the coalition is only to grab as much benefit as possible for future political contingency, the impact of such a coalition on future elections will be adverse. Let it not be forgotten that in different countries of Europe, 28 coalitions survived their full term of office in different periods, only because they had hammered out minimum agreed policies and programmes to be implemented with zest with a common code of conduct to which all coalition partners had an irrevocable commitment. Only future will bear out whether there is a realization of the mechanics as well as ethics of coalition experiment in a parliamentary democracy which rests on the values of liberty, equality, secularism, responsibility and tolerance. These values are the basis of a *coalition culture,* whose absence would hasten the doom of the coalition experiment and in the process, imperil the institution of parliamentary democracy. This is a warning of history that democrats would overlook at the cost of the very future of the country.

COMMUNICATION TECHNOLOGY AND DIGITAL DEMOCRACY

I.D. Swami

Introduction

The spectacular revolution in information and communication technology has radically changed the lives of our current generation. No other innovation since television has had this kind of impact on our lives. Its applications, in many ways, deliver services and information directly to people's doorsteps without Government's red tape. But delivering information services is only part of the picture. Its adoption in our daily life has changed the way we work, do business, learn, teach, travel, communicate and vote. It has helped us to globalize; it has also helped us to change our traditional conception of distance and time. It has even changed the way we run Governments and democracies.

The 21st century will continue to witness technologies transforming lives more rapidly, especially in the developing world. As access to communication and digital technologies becomes more widespread, Governments and civil society groups around the world will be at the forefront of harnessing these technologies to transform the way the Governments relate to citizens. They will innovate ways to improve citizen's involvement in decision-making and to enhance transparency and good governance.

Developments in the IT Sector in India

Before we discuss communication technology and digital democracy, it may be necessary to discuss briefly, the development of these technologies and of democracy in India. Information technology in India took off in the early 1980s. Since the liberalization of the Indian economy in the early 1990s, the Government of India has relentlessly promoted the Information Technology sector. Today, India may not be able to boast of a large percentage of personal computers, but it certainly can do so in another area—it has the largest number of software professionals outside the Silicon Valley, USA.

Unfortunately, this revolution bypassed rural India. The vision of our Prime Minister Shri Atal Bihari Vajpayee is to see that every Indian village is connected with the global village that is being created by the information and communication revolution. Now, digital development has the same reach as the original Internet boom of the mid-1990s. Amazing are the changes these technologies have made in our life! Far more are the opportunities in the offing in the coming years and decades.

Electronic Voting Machines

Let us take a look at the electronic voting machines; they are simple, safe and secure in registering votes in a democracy. It takes the minimum of time to register votes compared to the age-old time consuming system of voters stamping on paper ballots against his/her favourite candidate's name and then folding the ballot paper as per a prescribed method before putting it in the ballot box.

The most important advantage of electronic voting machines is that the printing of millions of ballot papers can be dispensed with. Only one ballot paper is required for fixing on the Balloting Unit at each polling station. This results in huge savings by way of cost of paper, printing, transportation, storage and distribution. Secondly, counting is quick and literally and figuratively at the pressing of a button. The result can be declared within 2 to 3 hours as compared to 30-40 hours, on an average, under the conventional system. Thirdly, the problem of invalid votes is eliminated. In every General Election, the number of invalid votes is, in several constituencies, more than the winning margin between the winning candidate and the candidate who polled the next highest number of votes.

Computerisation of Electoral Rolls

The Election Commission of India has undertaken a massive exercise to computerize the entire electoral roll of India. This will lead to improvements in the accuracy and speed with which the electoral roll can be updated. This has already been completed in a few Northern States and the State of Tripura.

Elections in a Democratic Set-up

The origin of democracy is traced to the city state of Greece from where it started slowly spreading to other parts. In 1941, there were only about a dozen democracies in the world. However, its expansion was rapid particularly in the last twenty years. Many democracies in the world are still fragile. Electoral democracy now represents 120 of the 192 existing countries, with 58.2 per cent of the world's population giving it sanction. Liberal democracy that respects basic human rights and the Rule of Law exists only in 85 countries representing 38 per cent of the global population. Elections are the integral part of any democracy, and conducting election is the most complex problem of a democratic nation.

The General Elections in India is the biggest voting exercise amongst all democracies in the world. It can rightly be described as the 'Mother of all Elections' for the simple reason that it involves 620 million electorate drawn from a population of one billion-plus. Indian democracy's strongest point, despite its massiveness and the complexity, is that elections are held as per schedule and are free and fair. They are events involving political mobilization and organizational complexity of an amazing scale. Its verdicts are rarely challenged and normally accepted—great going for any democracy!

In the 1996 elections to the Lok Sabha, there were 2,269 candidates from 38 officially recognized national and State parties; also contesting election were 1,048 candidates from registered parties which were not recognized and 10,635 independent candidates. A total number of 59,25,72,288 people voted. The Election Commission employed almost 40,00,000 people to run the election. The direct cost of organizing the election amounted to approximately Rs. 5,180 million. Despite such massiveness and complexity of the electoral process, and in spite of widespread poverty and illiteracy, the Indian electorate has shown remarkable political maturity; there have been several instances when they voted out political parties and Governments.

Online Voting

We in India have now reached a stage where we use electronic voting machines for casting votes conveniently, accurately and with speed. But the more advanced countries will soon be considering the feasibility of allowing voting through Internet using a "Valid Digital Signature". Looking at the way the digital technology is catching up, the day is not too far for many democracies of the world to go for online voting. ICANN—the Internet Corporation for Assigned Names and Numbers—was the first to conduct a worldwide online voting for selecting its Board Members from amongst its members from around the world. That is the largest online Internet voting so far. But Switzerland will be the first country in the world to experiment with online voting when they conduct their Municipal Election in 2002 in which the electorate will have the option of casting vote online.

The proposed experimental online voting has raised some practical issues, such as security and fraud prevention. A survey conducted there has indicated that the opportunity to vote online may increase participation in elections by as much as nine per cent. That means, online voting can revive the falling interest of people in electoral participation.

Online voting offers the real potential to reinvigorate citizen's awareness and participation in decision-making. Modern urban life can be alienating, leading to popular apathy and unwillingness to participate in elections. The answer to voters' apathy is perhaps online voting because it obviates the necessity of casting ballots in person or via traditional mail. Clearly, that will have a dramatic and significant effect in opening new avenues for deepening democracy. Online voting will, thus, fundamentally change the nature of electoral participation and enhance democracy itself.

Online Voting : Problems and Prospects

When we talk in terms of introducing online voting, a few questions arise about the possibilities and problems of applying this to our voting process. Can electoral participation through 'I-Voting' prevent election malpractices? Will it be possible for hackers to rig election results? Can the new technology prevent the risk of somebody stealing votes? The answer to all these questions is 'no'. Election fraud is as old as election itself. Impersonation, booth capturing, forgery, stolen ballot boxes, election-day violence and threats, cash handouts, intimidation of voters—all these will exist even in online voting system.

If impersonation could take place in conventional voting methods, the same may be possible in online voting too. Digital thieves can impersonate one's online identity and create mischief. In short, rigging is possible in both paper-ballot-election and paperless-online-election. Electronic vote theft has never been proven.

What the electronic voting machines can do is to minimize malpractices and speed up the election process tremendously. Those should be sufficient reasons to impel its adoption. But technology can fail anywhere, anytime, and it rarely comes without attached glitches. Such failure can cause a great amount of embarrassment to any Government. Such a thing happened to the most powerful democracy, the United States during the Presidential Elections in 2000. It will be interesting to examine both the possibilities and the problems of applying these technologies to our voting processes.

When the long drawn out Presidential election process came to an end, the entire world was taken aback at the predicament of the US

Government and people. A nation, which doubtlessly qualifies to be addressed as *the digital democracy,* was seen taking weeks to count a few thousand ballots and then not getting it anywhere right. Concede, retract, absentee votes, count, re-count, partial re-count and the like were the highlights of the US Presidential election of 2000. Why did such a thing happen to the American electorate capable of doing practically everything electronically?

Fifty-four per cent of American citizens are netizens; seventy million out of a population of 276 million people are voters. Despite being so advanced in technology, why was it that some voters were unable to rightly interpret the position of an arrow on a punch card? Why was the most powerful democracy in the world unable to provide a fail-safe, simple voting machine for its citizens? Well, technologies come with attached glitches. The most important obstacle to online voting is perhaps uneven access to Internet facilities. Access is a prerequisite, demanding more widespread service and information literacy. In most countries, and particularly in the developing world, access to online services is limited to the wealthy few.

Conclusion

Digital democracy through online voting may not be a universal remedy for all the ills of the present voting system. Internet voting has the potential and ability to transform democracies, provided we exploit it for good causes. Like any other technology, this too has the power and the potential for both good and evil. It certainly has a place in any liberal democracy despite the risks of potential software flaws, human error and human mischief.

INDIAN DIPLOMACY—ITS TASKS IN THE 21ST CENTURY

I.K. Gujral

Introduction

As I look back at the half century of Independent India's diplomacy, I recall Nehru's enunciation of the philosophy of our foreign policy. He said: "I have always looked to the interests of India, for that is my first duty. I have always interpreted that interest in terms of the larger good of the world community. This is what Mahatma taught us and he taught us always to seek the way of peace and friendship with others, always keeping in mind the freedom and dignity of India." Since then, much has flown past the markers of time with breathless speed. His successors in high office have firmly held on to these basic postulates of our diplomacy.

Changing Dimensions of Diplomacy

The 20th century had seen five hundred wars, including two World Wars in a single generation, two great social Revolutions—one of them did not survive the century—and the emergence of the United States of America as the most dominant world power. It was also a century of the weapons of mass destruction; of a series of ethnic cleansing topped by the Nazi holocaust in which six million Jews were killed in cold blood; and of countless insurgencies and religious fundamentalism out to conquer large political pastures. And this was also the century of man's conquest of space; his landing on the Moon, the construction of enduring space stations, and the discovery of planets other than the Earth in the solar system. The invention of life-saving drugs has blessed humankind with a longevity it could not even hope to enjoy in the preceding eras. The twin revolutions of informatics and transport have radically changed the content, style and objectives of diplomacy.

International Relations : Emerging Realities

The global village is now a part of our lexicon. Speedy air travel and new tools of data transmissions have lowered the barriers of national borders and prepared the ground for eventual grouping of nations on regional, even inter-regional scales. Indeed, regionalism is the *mantra* of international politics of the 20th century. It has not succeeded equally all over the world. But, at least, in Europe, it has laid the foundations of a single political unit of twelve sovereign States expanding to fifteen. In the Asia-Pacific region, in South-East Asia, South Asia, Latin America and Africa as well as in North America, regional cooperation, even integration, has become the catchword of large swathes of humanity.

Of all the great earthshaking changes that had distinguished the last century, the most important from our point of view, and from the point of view of the vast majority of humankind, was the decolonisation revolution. For the first time since recorded history, the planet was free of colonies.

In the mid-century, the entire web of relationships amongst the countries of the world was drawn up on premises, *viz.*, where one stood in the Cold War, or in the various multilateral fora. However, the preceding years have seen the axioms on which the post-World War world rested, altered radically. The Cold War is over, which in itself is not lamentable. Unfortunately, however, global institutions such as the United Nations and the Non-Aligned Movement are also weakened and the dream of having an international system based on the Rule of Law and its due process is in danger of withering away. These shifts have made it imperative for all countries to develop a new and sound basis for recasting their relationships with each other. This is the situation which has confronted every Government formed in India in recent times. In the post-Cold War years, the old friendships and blocks have become meaningless, and global institutions such as the UN, that represented law and legality in international relations, have lost credibility. How are we to ensure that India's vital strategic and economic interests are safeguarded? How are we to ensure that the process of development and the economic and social betterment of our people is not in any way damaged by developments beyond our borders?

India and its Neighbours

In 1990 and again during 1996-98, as in-charge of the foreign affairs of India, it was quite clear to me that I would have to recast India's relationship with the world and the immediate neighbours. This was why I reached out to our smaller neighbours—Bangladesh, Nepal, Sri Lanka, Bhutan and the Maldives—and promised them that India would go more than half the way in meeting their concerns. Such an approach was essential if we were to create a new climate of cooperation and goodwill in South Asia that would ultimately help, both in political and economic terms.

The good neighbourhood policy that was thus instituted—the 'Gujral Doctrine' as it came to be termed—paid back rewards which exceeded my optimistic estimates. In our neighbourhood, as well as in the world, this approach had shown India as a responsible, reasonable and generous nation which was more than willing to accommodate the legitimate concerns of its smaller and weaker neighbours. This contributed to neutralizing Pakistani propaganda about India.

On the economic front, this policy paid even richer dividends. The South Asian sub-continent has immense resources—be it of men, materials or energy—that have remained wasted because the trust and cooperation required to utilize these resources sensibly is lacking. The new atmosphere of trust and goodwill that the Gujral Doctrine sought to generate attracted overseas investments. The global investing community was quick to foresee that numerous projects in the fields of infrastructure, transportation, energy and communications would become viable and bankable once the barriers to trade and economic cooperation in South Asia began to be lifted.

Peace and Development : A Symbiotic Relationship

A climate of peace and cooperation is essential for development in another respect as well. When trust and goodwill is lacking, the economic development risks are channelised into destructive uses. Such tendencies were witnessed, in both Japan and Germany, which underwent rapid economic development in the late 19th and early 20th centuries. Their fast economic growths destabilised the social equilibrium and placed misguided people and parties into positions of power. The lop-sided growths generated energies, seeking outlets. In the environment of social hostilities, the normally benign process of development can suddenly turn malignant, fuelling militant nationalisms to end up in self-destruction. Sometimes, I am afraid that such a scenario is being revisited in some parts of the world today.

South Asia : Imperative of Good Neighbourliness

More than fifty years have elapsed since the people of South Asia overthrew British colonialism. Yet, we have made only a very small improvement in the living conditions of our countrymen. More than half of the world's poverty-stricken people reside in South Asia. These statistics should make everyone who has had a hand in running the country, be he politician, academic or bureaucrat, hang his head in shame. If we are serious about the economic development of our sub-continent, if we are serious about eradicating poverty and its attendant evils, if we do believe, as we must believe, that the legitimacy of governance lies in improving the lives of our poorest people, then there is no choice other than to work to build a neighbourhood policy which will promote the climate of trust and goodwill required for our region to take off. That is why I think the Government, which followed mine, has continued with the same basic thrust that I had set out.

Threat of Terrorism

The country is presently confronted with a heavy roadblock that the Kargil conflict has placed in its way. The war and upping of the terrorist activities in Jammu and Kashmir and elsewhere have very much damaged the Lahore process and given a serious setback to South Asian cooperation. It is saddening to notice that the *inter se* polemics are now ending in armed confrontations and a much lesser vision of the SAARC community that we had promoted at Male and Colombo. On the contrary, along with the rest of the world, we are experiencing terrorism and confronting diplomacies transforming the axioms of geo-politics of this region.

Indian Diplomacy : New Realities

India's diplomacy has always been a mirror of India's plight. In the sixties and earlier parts of the seventies, one of the main tasks before our diplomats was to go around the world seeking assistance for the purchase of foodgrains and other essentials. In the eighties, they had to convince a sceptical world that India was not about to be torn apart on account of various ethnic and religious differences. But, now, in the 21st century, India has come into its own. Our progress in science and technology, the steady and sustained performance of the Indian economy as also the achievements of our countrymen and those of the Non-Resident Indians who have settled in various countries abroad, have won respect for India and its capabilities. When I met President Clinton in New York in September 1997, he did not talk to me about Kashmir or other such issues but he did observe, "You guys own half of Silicon Valley."

I am confident of Indian capabilities and that we can not only meet but also benefit from the on-going challenges of globalisation and international competition. For, if Indians can prosper without subsidy or protection when they go to reside elsewhere in the world, then there is no reason why they will not do the same when the rest of the world comes to India.

Indian Diplomacy : Challenges Ahead

This is not to say that challenges do not remain. A trend that is quite clearly visible in the modern days is the weakening of bilateralism and the growing role of multilateral diplomacy in the determination of international affairs. Today, the most important global issues ranging from international trade to the Law of the Sea, and from security and disarmament to environment and measures for the conservation of the flora and fauna and preservation of the species, are all determined in multilateral format. Multilateral diplomacy is a specialised art requiring inputs not only from the area of conventional diplomacy but also from specialist agencies and technical and legal experts as well. Unfortunately, we have not yet adequately adapted ourselves to this changed requirement and we have still to build up the specialisation and inter-disciplinary approach which successful multilateral diplomacy requires. Take the issue of trade as an example. The GATT and WTO agreements are central to India's economic welfare and India has traditionally played an important role in these negotiations, both on its own behalf, and as a spokesman of the developing world. Despite this, our trade diplomacy has not yet developed the needed institutional roots or structures whereby we could build up people with the skills, experience, expertise and the institutional memory required to develop and maintain a position in these negotiations effectively. This, I think, is one of the principal reasons for our diminishing role in the formulation of the WTO agreements. The same holds true to varying degrees in other international treaties and organisations as well.

Marginalisation of the United Nations

Another modern day trend that should worry us considerably is the progressive marginalisation of the United Nations and its agencies. The importance of the UN derives from the fact that it represents an international system built on the foundation of the Rule of Law and due procedure in the conduct of international relations. It is this system which has allowed all nations, whether big or small, strong or weak, to participate in the affairs of the world with an equal voice. If this system lapses, it would inevitably lead to the marginalisation of the weaker countries and clashes for power and influence amongst the stronger, more powerful, nations. This, in other words, is a perfect recipe for endangering the relative peace and stability that the world has been fortunate to witness over the fifty odd years since the United Nations was established.

Today, the paramount power of the UN is in danger of being fully usurped by the major industrialised countries. The annual summit meetings of the G-7 countries and Russia have become the real fora where global issues are discussed and decided upon. I have heard it said amongst diplomatic circles that the industrialised countries prefer to debate and discuss issues in the informal atmosphere of the G-8 councils rather than in the Security Council where there are the inconveniences of a wider membership and formal rules of procedure. The decisions taken by the G-8 and its instruments such as the NATO are then rubber stamped by the Security Council. The most vivid example of this tendency was provided during the Kosovo conflict and more recently in Afghanistan when all the effective decisions relating to the initiation, conduct and conclusions were made in the coalition forums to be later rubber stamped as required by the UN. Even the UN Security Council resolutions were drafted mainly in Washington. Endorsements by the UN Security Council were taken as a foregone conclusion. The whole Yugoslavia story was a pointer to how the Rule of Law has weakened, how the powerful nations of the world have chosen to take the law in their own hands and how genuinely representative bodies and councils such as the United Nations have been effectively marginalised. To a large extent, the tale of Afghanistan could be narrated in similar idioms, though it must be said that extinction of the contemptible Talibanism has given the needed relief to the wide world and even more specifically to this region and though the spectre of terrorism and religious fundamentalism continue to haunt the world.

Conclusion

These then are some of the principal challenges before India. We have no reason to be scared of the world. The *Bhagvad Gita* tells us that the ideal person is one who neither seeks the world nor runs away from it. This should be our approach as well. India today is developing many new strengths—military, scientific, technological and economic—and we have no reason to be afraid or shy of the world in any way. The main challenge before us in fact is to use our strengths responsibly and for the betterment of the world as a whole.

INTER-PARLIAMENTARY UNION—THE FOCAL POINT OF PARLIAMENTARY DIPLOMACY

Najma Heptulla

Introduction

My election as the first woman President of the IPU is a tribute to Indian parliamentary democracy. Our Parliament, as the supreme representative institution of the world's second largest population, has been a forum to create a national consensus on governance. Also, it provides an effective supplementary channel for parliamentary diplomacy to project and promote our country's views at international and regional parliamentary fora as also in the bilateral parliamentary exchanges.

The role of the Parliament in international relations was recognized by the Indian leadership, when the first Prime Minister of India and the architect of Indian foreign policy, Pt. Nehru himself piloted the resolution in the Parliament seeking Indian Parliament's association with the IPU.

Role of Parliamentarians

Today, the Parliaments are increasingly called upon to concern themselves with issues of international dimensions. In fact, the problems debated in Parliament and their solutions are increasingly becoming transnational. The issues of development, environmental protection, human rights, security, etc. which were deemed to be purely domestic responsibilities of the Governments have assumed international dimensions. The growing public awareness on political and economic issues together with the democratization of the international polity, economic interdependence and developments in transport and communication technologies have added a new impetus to contemporary international relations. As a result, the role of regional and international organizations has grown significantly in finding out solutions to the issues of common concern. Parliamentarians, as people's representatives, have a special role to perform in reducing international tensions. They have to strive for peace and prosperity both at the national and international level by promoting understanding and cooperation. They are in a unique position to inform public opinion and guide their Governments. Parliaments can become the interlocutor between global dialogue and local aspirations. They can represent the popular aspirations in the international negotiations; also, as the law-makers they can approve appropriate national legislations to meet these international obligations. Parliamentarians can keep a close oversight on the implementation of international obligations so as to safeguard and promote the interests of the public. It is in this context that inter-parliamentary cooperation amongst nations having faith in the democratic parliamentary institutions has come to assume great importance.

Role of Inter-Parliamentary Union

Having been associated with the IPU as the President of its Council, I feel that it performs an invaluable role in promoting inter-parliamentary cooperation. Established in 1889 at the initiative of two parliamentarians and men of peace, William Randal Cremer of the United Kingdom and Frederic Passy of France, the Inter-Parliamentary Union was the first permanent forum for multilateral negotiations. Promoting the concepts of peace and international arbitration, the IPU provided the basis for institutionalized multilateral cooperation and advocated the establishment of corresponding institutions at the inter-governmental level, which eventually came into existence as the United Nations. The Union was also instrumental in setting up what is now the Permanent Court of Arbitration in the Hague.

The IPU is the focal point for worldwide parliamentary dialogue and works for peace and cooperation among peoples and for the firm establishment of representative democracy. Towards that end, the Union seeks to promote contacts, co-ordination and exchange of views and experiences amongst Parliaments and parliamentarians of all countries by studying political, economic, social and cultural problems of international significance, with a view to bringing about desired action in national Parliaments.

The IPU functions as a well-structured organization. The Inter-Parliamentary Council is the plenary policy making body of the IPU. A number of Committees and working groups are subordinated to it and report to the Council on their work. It is composed of two representatives from each member of Parliament. It considers, *inter alia,* substantive issues and adopts thematic resolutions and policy statements. The Union has an Executive Committee which is a 14-member body to oversee the administration of the Inter-Parliamentary Union and which provides advice to the Inter-Parliamentary Council. Inter-Parliamentary Conference is the principal statutory body, which expresses the views of the Inter-Parliamentary Union on political issues. It brings together parliamentarians to study international problems and makes recommendations for action. The Conference meets twice a year and is held each time in a different country, providing participants an opportunity to see various national realities. Four plenary Study Committees assist the Conference in its work. These Committees are: Committee on Political Questions, International Security and Disarmament; Committee on Parliamentary, Juridical and Human Rights Questions; Committee on Economic and Social Questions; and Committee on Education, Science, Culture and Environment.

The IPU has transformed itself from an association of individual parliamentarians into the international organization of the Parliaments of sovereign States. The IPU today is a much larger and more representative body—its present membership stands at 142 national groups and five associate members. It has, in fact, become a forum for parliamentary diplomacy amongst legislators representing every political system and all the main political leanings in the world, thus constituting a unique platform for observing political opinions and trends around the world. The Union supports the efforts of the United Nations, whose objectives it shares and works in close co-operation with it and its specialized agencies. It also co-operates with regional inter-parliamentary organizations, as well as international inter-governmental and non-governmental organizations, which are motivated by the same ideals. The IPU statutory conferences and specialized meetings serve as a testing ground for new ideas and initiatives leading to important breakthroughs in the search for peace and advancing international cooperation. A total of 107 Conferences have been held since 1889. At these Conferences, I recall, various important issues are discussed in a free and frank atmosphere and there is a discernible willingness on the part of all concerned to find lasting solutions to the common problems. Among the subjects recently discussed are problems of international security, impact of globalisation on economy, especially on developing countries, environment, women, children, AIDS, human rights and various aspects of the working of parliamentary institutions.

The activities of the IPU have expanded considerably, covering areas of promotion of representative democracy; international peace and security; sustainable development; human rights and humanitarian law; education, science and culture; and women in politics.

Promotion of Representative Democracy

The issue of the defence and promotion of representative democracy constitutes the core of much of the activities of the IPU. The questions relating to this area are frequently discussed at the IPU's statutory and specialized Conferences from different angles such as prevention of military and other coups against democratically elected Governments, links between Parliament and people, human development, and the link between democracy and economic growth, democracy and ethnic diversity, democracy and educational and cultural policies, parliamentary action to fight corruption, etc. In 1997, the IPU adopted a Universal Declaration on Democracy in Cairo. It is the first text adopted at the world level by parliamentarians that defines the parameters of democracy and its scope, dealing with the principle of democracy, the elements and exercise of democratic Government and the international dimension of democracy.

This area also includes promotion of knowledge about Parliaments, parliamentary elections and support to parliamentary institutions, by means of gathering and disseminating information on their constitutional powers, structure and working methods, electoral systems, etc. Much of the information about the Parliaments of the member countries is now gathered in the Union's database of parliamentary information—PARLINE. The Union also publishes comparative studies, etc. on Parliaments and electoral systems for use by parliamentarians, academics and the public at large. It also organizes international symposia and seminars for parliamentarians, senior parliamentary officials and civil servants, scholars and other experts to study the functioning of parliamentary institutions. The IPU runs a Technical Cooperation Programme which seeks to mobilise international support for improving the capabilities, infrastructure and technical facilities of national Parliaments, especially in developing countries, with a view to enabling them to fulfil their constitutional role more effectively.

The efforts by the IPU thus help the Legislatures in different countries to adapt themselves to the needs and challenges of the modern world. The use of information and communications technologies has not only led to greater interaction among Parliaments and their members but also to have information at their disposal which enables the members to carry out their parliamentary duties more effectively. Most Parliaments today are seeking ways of simplifying their procedures, streamlining their administration and making use of modern technology.

International Peace and Security

The issues relating to international peace and security have been regularly placed on the agenda of the IPU Conferences which have discussed, *inter alia,* such important issues as a global register of arms transfers, peace in the Middle East, nuclear non-proliferation, protection of minorities as a pre-requisite for stability, security and peace, Comprehensive Test Ban Treaty, ban on nuclear weapons' testing and fight against terrorism. It gives special priority to the elimination of conflict situations through political negotiation. It reacts to crises which can affect world or regional security and monitors certain conflict situations on an on-going basis such as in the Middle East. In 1987, a six-member Committee on the Middle East was set up to promote direct contacts between Arab and Israeli representatives and parliamentary action in support of the peace process.

Sustainable Development

For the Inter-Parliamentary Union, the concept of sustainable development goes beyond merely linking environmental considerations to economic growth. Sustainable development encompasses such other vital issues as human development, social and economic justice and advancement of democracy. The Committee for Sustainable Development guides the IPU work in this area. The IPU's statutory Conferences and specialized meetings discuss various specific problems of world economic and social development such as financing for development, the need to revise the current global financial and economic model, employment in a globalizing world, the need to eliminate all commercial and other forms of sexual exploitation of children, globalization of economy and liberalization of trade, Third World debt and its impact as a factor limiting the integration of the Third World countries into the process of globalisation, writing off of the Government debt of heavily indebted poor countries, spread of AIDS and its devastating human, economic and social impact, international mass migration of people, situation of the elderly, children's rights, demographic problems, the problem of metropolitan areas, the right to food, etc.

The complexities of international trade and the role and operations of international financial institutions and multi-national corporations give an impression that the control of national Governments and Parliaments may be on the wane. But we must remember that whatever be the economic or political situation, the decisions in the ultimate analysis have to be taken by individual Governments. And Governments, in turn, are accountable to Parliament. This fact was the underlying basis for the first ever world parliamentary meeting on international trade held at Geneva at the initiative of the Inter-Parliamentary Union, in June 2001, where I was present as the President of the IPU Council. Parliamentarians from 71 national Parliaments attended the meeting. They adopted a final declaration which underscored the need to intensify their activities in national Parliaments and aimed at over-seeing and influencing Government policy in relation to trade negotiations.

Protection of the environment has long been a concern of the IPU, and its actions in this field are carried out in the framework of sustainable development. The first worldwide Inter-Parliamentary Conference on Environment was held in 1984 in Nairobi. The Conference advocated the inclusion of environmental protection in the development process. Since 1992, the IPU's environment programme has focused primarily on preparation of directions for and implementation at the parliamentary level of the recommendations of the UN Conference on Environment and Development held at Rio de Janeiro in June 1992.

Human Rights and Humanitarian Laws

In the areas of human rights and humanitarian law, the IPU seeks to address the protection and promotion of the human rights of parliamentarians, general issues of human rights violation and the international humanitarian law. In 1976, the IPU adopted a "Procedure for the examination and treatment of communications concerning violations of the human rights of parliamentarians", applicable to members of Parliament who are, or have been, subjected to arbitrary actions, *e.g.* State harassment, arbitrary arrest and detention, unfair trial, violation of parliamentary immunity during the exercise of their mandate, whether the Parliament is sitting, in recess or has been dissolved by unconstitutional or extraordinary measures. A Committee on the Human Rights of Parliamentarians, made up of five members representing different regions of the world, is responsible for the treatment of such complaints. Besides, the IPU discusses specific cases of human rights violation in the course of armed conflict and the role of national institutions in safeguarding human rights.

A consistent element of the IPU action is respect for international humanitarian law. In this field, the Union co-operates closely with the International Committee of the Red Cross (ICRC); supports the effective implementation of the Geneva Conventions; and works for the adoption of appropriate national legislation. In October 1995, the Inter-Parliamentary Council adopted a special resolution to set up a reporting mechanism on steps taken at the parliamentary level to ensure respect for international humanitarian law.

Education, Science and Culture

In the fields of education, science and culture, the IPU focuses on issues of special interests to the world parliamentary community at large. It works in close cooperation with the UN and its specialized agencies. This is reflected in the choice of subjects for statutory Conferences of the

Union which have recently addressed such diverse subjects as dialogue among civilizations, educational and cultural policies and bioethics. Specialized meetings, organized by the Union on a regular basis, often deal with similar subjects. Two recent examples of thematic Conferences on these areas were the Asia and Pacific Inter-Parliamentary Conference on "Science and Technology for Regional Sustainable Development" held in Tokyo in June 1994, and the Inter-Parliamentary Conference on "Education, Science, Culture and Communication on the Threshold of the 21st Century" organized jointly by the IPU and UNESCO in Paris in June 1996.

Women in Politics

Women's issues concern society as a whole just as all issues concern women. From this perspective, subjects concerning women are dealt with in statutory Conferences and specialized meetings of the IPU. Numerous resolutions, fundings and recommendations of the IPU have focused on particular aspects of the status of women. It studies a series of issues of direct concern to women such as partnership between men and women in politics, women in national Parliaments, political parties and electoral process, women's contribution to development, violence against women, women in armed conflict, the impact of the media on the status of women and the image of women politicians in media, etc.

It is generally felt that with an increasing number of women coming into politics, the nature of politics would change; similarly, perspectives on social and economic issues would also change. The IPU document, *Democracy Still in the Making,* which has the latest data up to January 1997 from 115 Assemblies, mirrored ground-truths on the status of partnership between men and women in politics. There were only five Parliaments in the world where the representation for women exceeded 30 per cent. The majority hovered between 10 and 30 per cent. Some still had less than 3 per cent. The average for the world was 11.7 per cent. The conclusion of the study is that there is as yet a serious democratic deficit and a glaring waste of human resources. In the words of Mr. Pierre Cornillon, the former IPU Secretary General, this study "serves once more to highlight the fact that the world's political landscape is dominated by men."

Thus, a critical mass of women is necessary in politics to make partnership between men and women real. This can come about only through capacity building and the creation of a conducive environment, where women's worth and contributions are noticed by the media and political parties which are the agents of change. An accountable and transparent system of financing political campaigns with a good legal framework should be set up to isolate politics from corrupt practices. This would enable greater access for women to politics, and change the texture of politics as well as political agendas. This was the highlight of the IPU Specialized Conference hosted by India under the aegis of the Inter-Parliamentary Union on 'Towards Partnership Between Men and Women in Politics', at New Delhi, in February 1997. The Specialized Conference shifted world attention from policies and strategies to actual action in the field; while the political parties, Governments, training and education systems and media, could create a congenial environment, men and women are required to change their mindset.

Recent trends in the IPU

In view of the recent trends in parliamentary diplomacy, the Union is actively considering reforms to make itself more topical, prompt and cost effective. The Union has acknowledged the significant role of regional parliamentary groupings in voicing the regional concerns. The IPU has been keen to cooperate with such regional parliamentary bodies that broadly subscribe to the Union's agenda.

The Union is also in the process of enhancing its cooperation with the UN system and other inter-governmental organizations like WTO, World Bank, UNCTAD, etc. Unlike inter-governmental organizations where only Governments are represented, the Union has the advantage of having the widest possible spectrum of political opinion from the democratic community. This places the Union in a curious position to provide a parliamentary input to these inter-governmental organizations. This was recognized in the Millennium Declaration of the UN, where the IPU has been recognized as the world organization of National Parliaments.

In recent years, the Union has taken up two issues that are of prime interest for our country. One, globalization and its effect on the developing societies. Not only the issue has been discussed in the IPU Conferences, the Union also convened a special conference in June 2001 at Geneva in association with the WTO. Later, we also met at the sidelines of the Fourth Ministerial at Doha. It has been emphasized that the current globalization will remain unsustainable if it does not address the concerns of the developing countries.

Secondly, the Union has condemned terrorism in all its forms and manifestations. It has supported the UN Security Council Resolution 1373. The Union also strongly condemned the terrorist attack on the Indian Parliament in December 2001. It is also in the process of preparing a discussion paper on terrorism in association with the relevant UN working group.

Conclusion

Parliamentary cooperation has assumed a new dimension in the wake of the challenges of the new world brought about by the developments in information and communication technologies, which cannot be addressed merely at the national level. The issues of development, environment, security, human rights, etc. have assumed international dimensions and need solution at the international level. Parliaments and their members have a unique role to play in bringing global institutions such as the United Nations and other regional groups closer to the people they are meant to serve. They have an important role to play in making international institutions more transparent and equitable. Parliaments no longer can remain content merely by ratifying the decisions taken by their Governments. To do so would amount to relinquishing their role as people's representatives. The active role played by Parliaments through the means of parliamentary diplomacy in fact complements and supplements the efforts of national Governments in promoting cooperation and understanding. It seeks to evolve a consensus on matters of common concern through persuasion and exchange of ideas and simplifies the preparatory work in the run-up to formal negotiations between Governments.

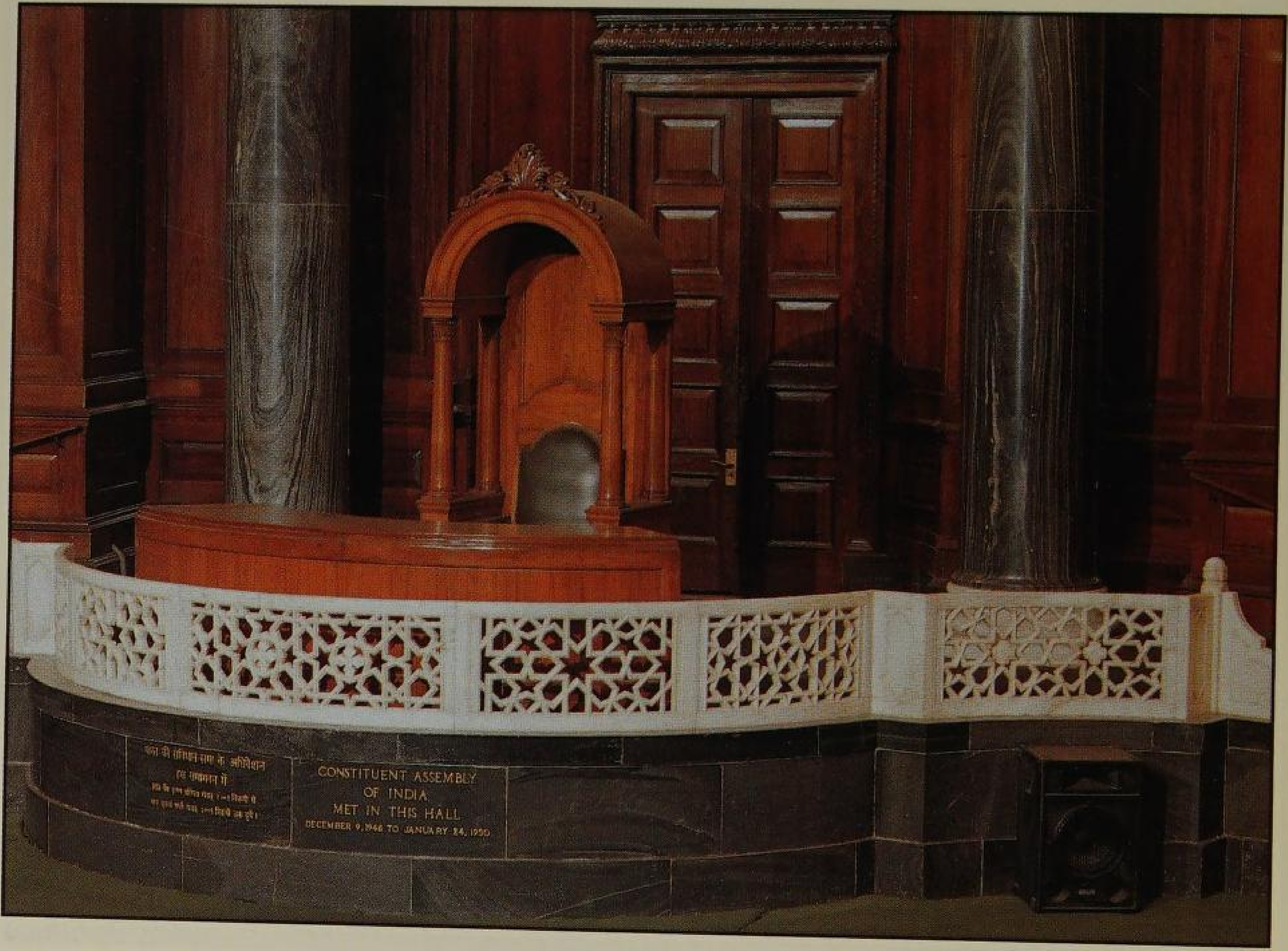
In view of the growing dimensions of inter-parliamentary cooperation, parliamentarians need to develop their skills at analyzing people's expectations and bring them to the fore by discussing them nationally and internationally through mutual consultation and cooperation. The IPU in particular has made an enormous contribution to the cause of world peace and holds out good prospects for ensuring understanding and cooperation among different countries and promoting respect for parliamentary institutions. I am sure this unique Union of parliamentarians will continue from strength to strength in the years ahead.

INDIAN PARLIAMENT—
A PICTORIAL ESSAY

Parliament House

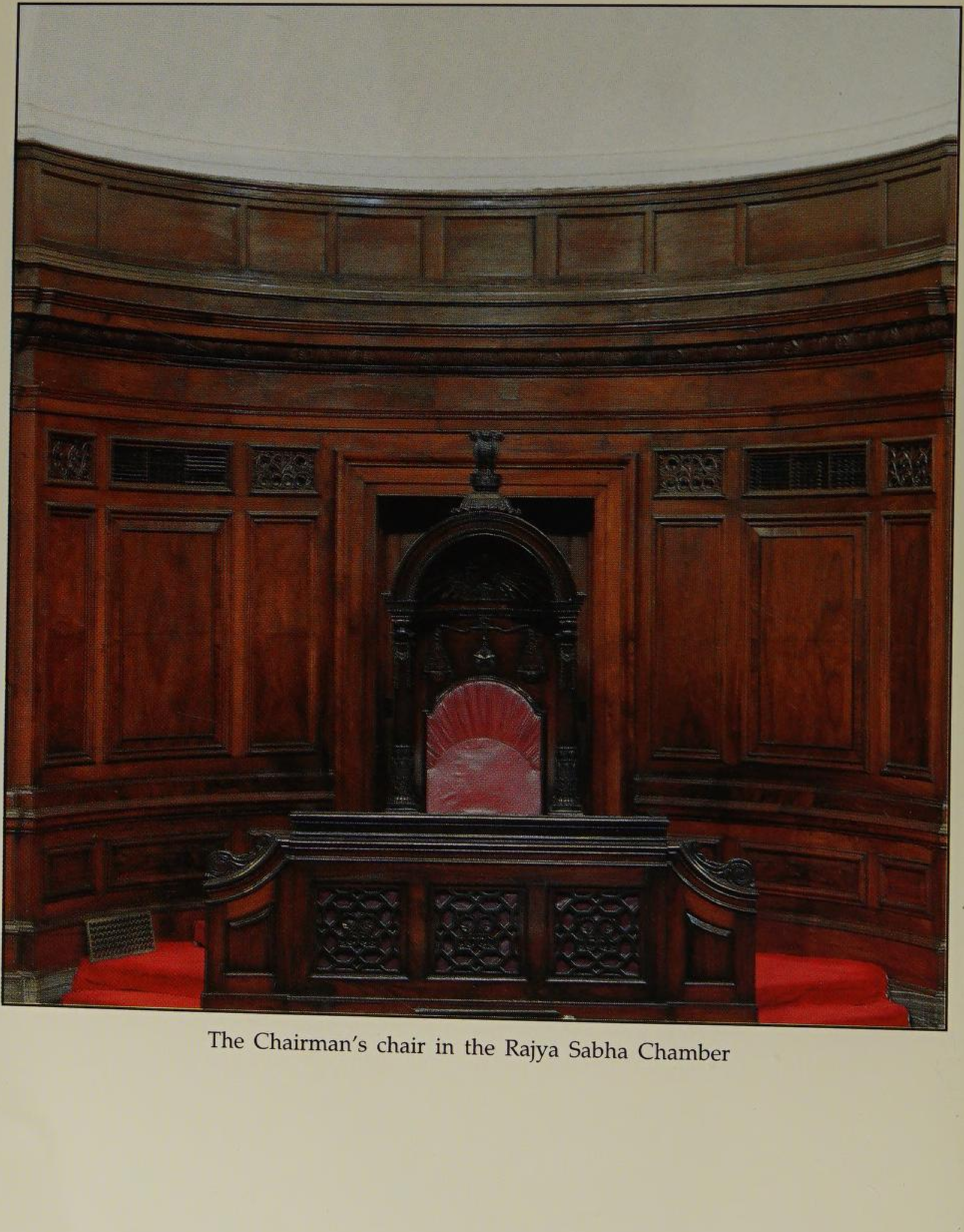
A view of the Parliament House showing the Speaker's Gate,
with fountains playing in front

Central Hall of Parliament House


CONSTITUENT ASSEMBLY
OF INDIA
MET IN THIS HALL
DECEMBER 9, 1946 TO JANUARY 24, 1950

A view of the dais in the Central Hall

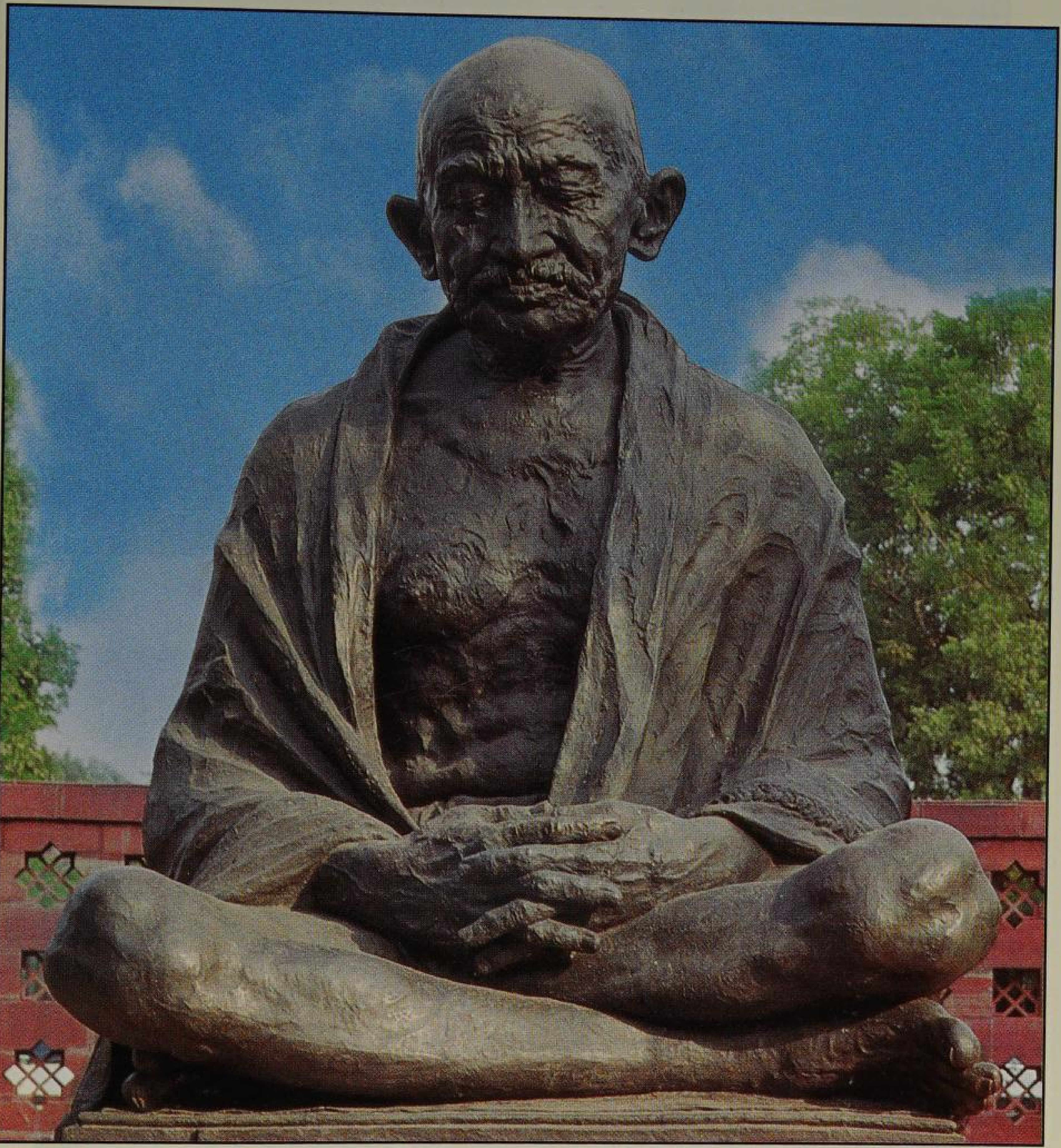
The Rajya Sabha Chamber



The Chairman's chair in the Rajya Sabha Chamber

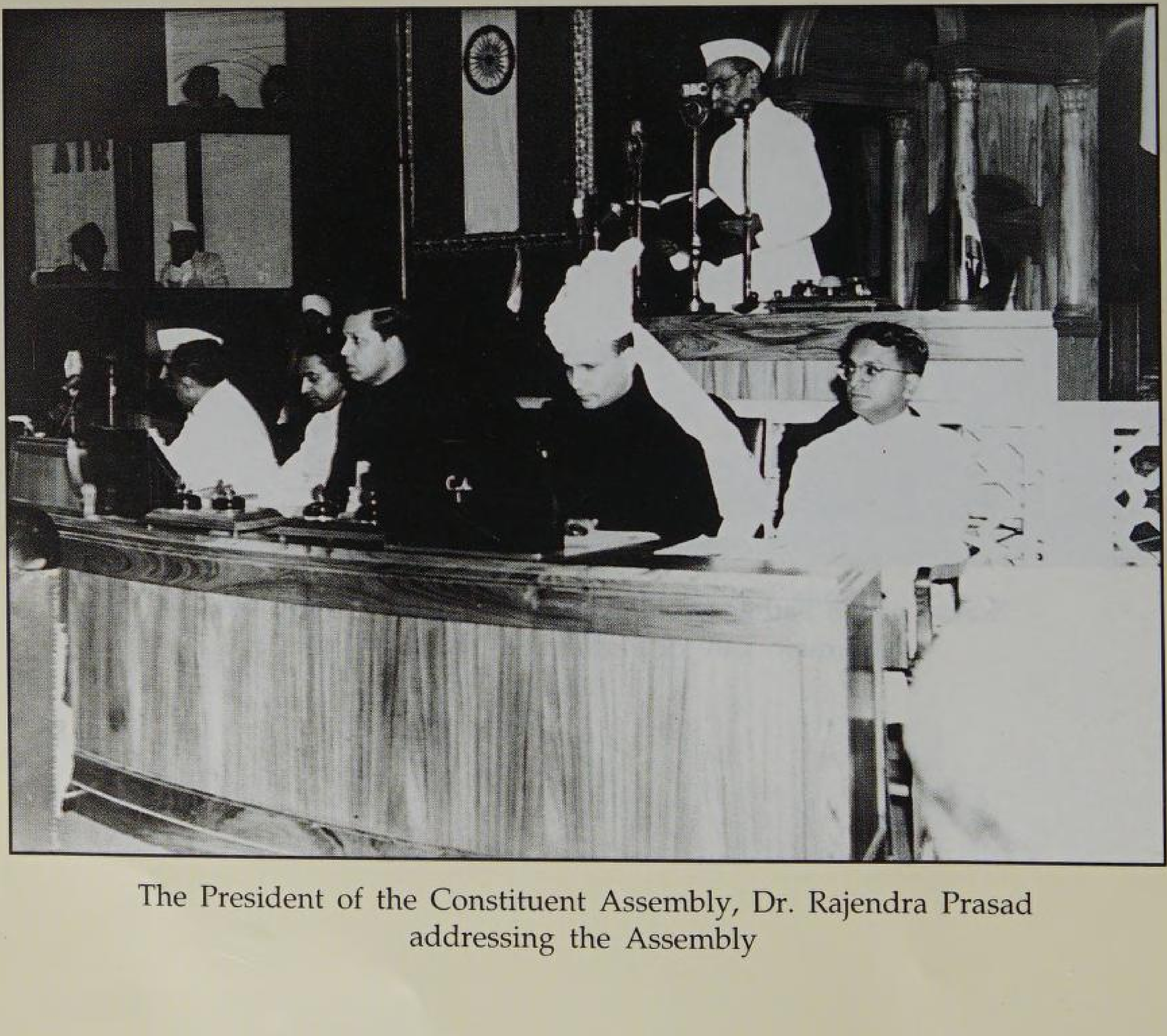
The Lok Sabha Chamber

The Speaker's chair in the Lok Sabha Chamber



Statue of the Father of the Nation, Mahatma Gandhi outside the main gate of Parliament House Building

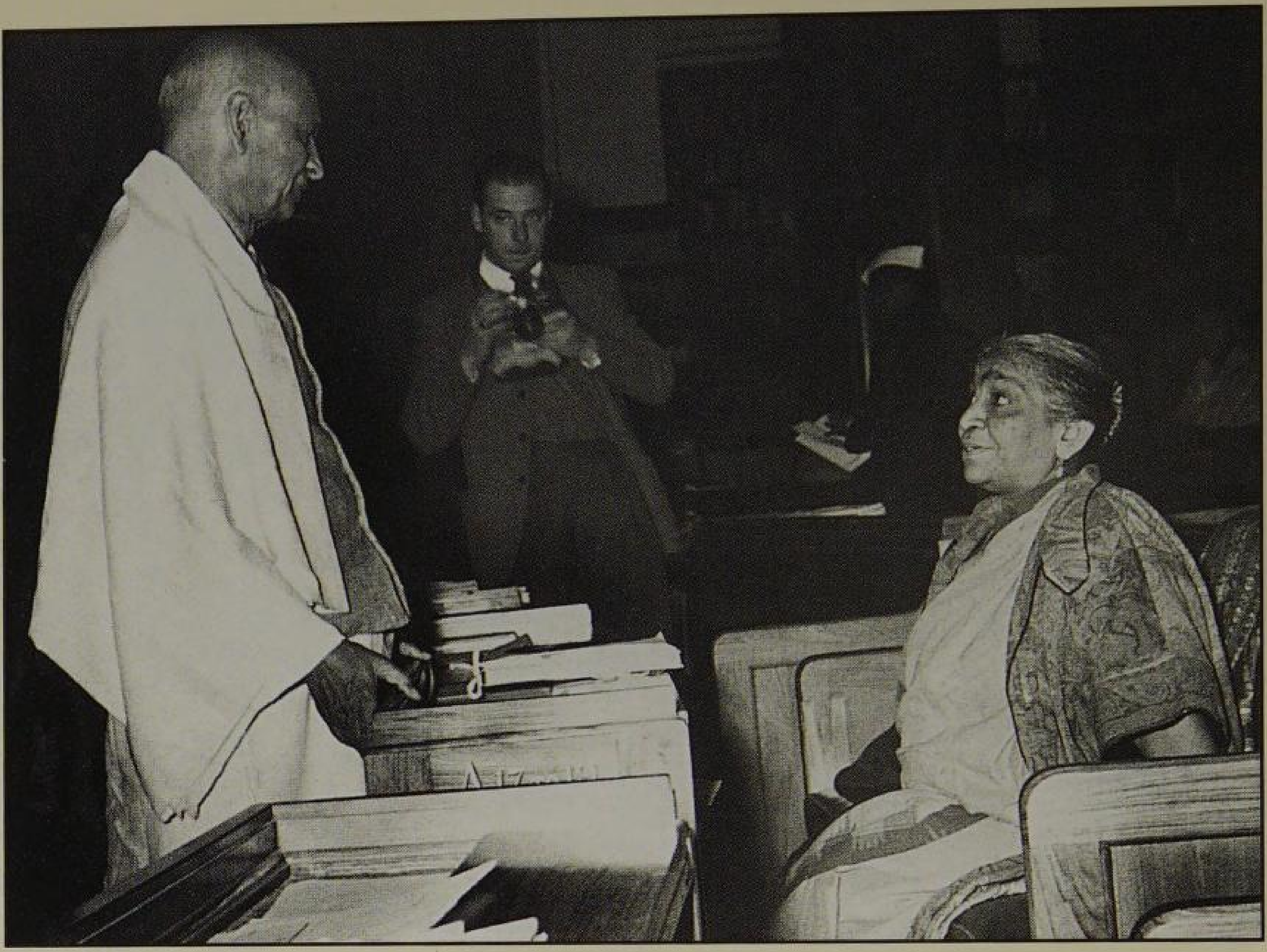
Members of the Constituent Assembly coming to attend the Assembly Session on the opening day, 9 December 1946



The President of the Constituent Assembly, Dr. Rajendra Prasad addressing the Assembly

Pandit Jawaharlal Nehru addressing the Constituent Assembly

Dr. Syama Prasad Mookerjee with Shri B. G. Kher at a session of the Constituent Assembly



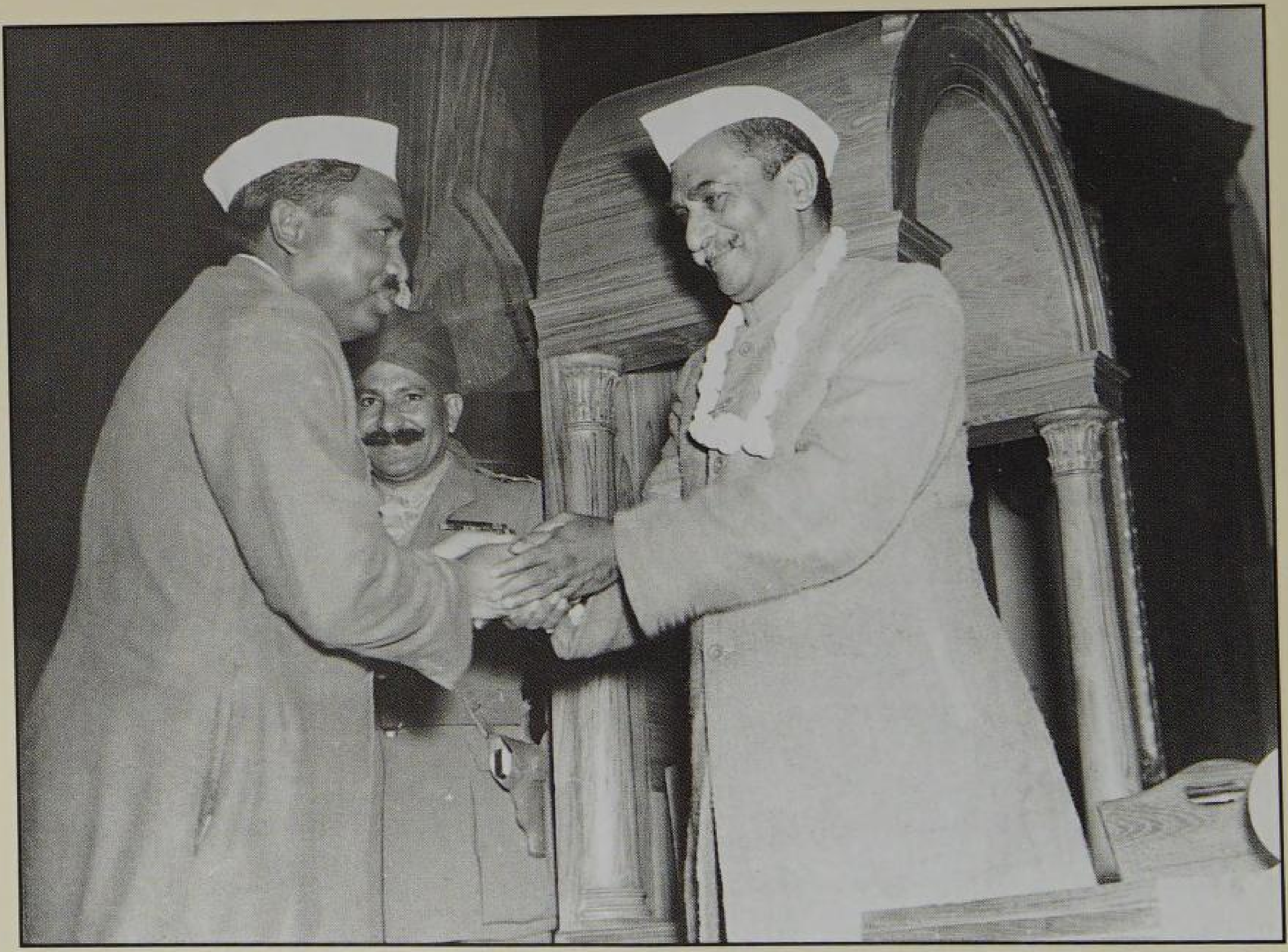
Sardar Vallabhbhai Patel with Smt. Sarojini Naidu at one of the sessions of the Constituent Assembly

Dr. B.R. Ambedkar at the Constituent Assembly session

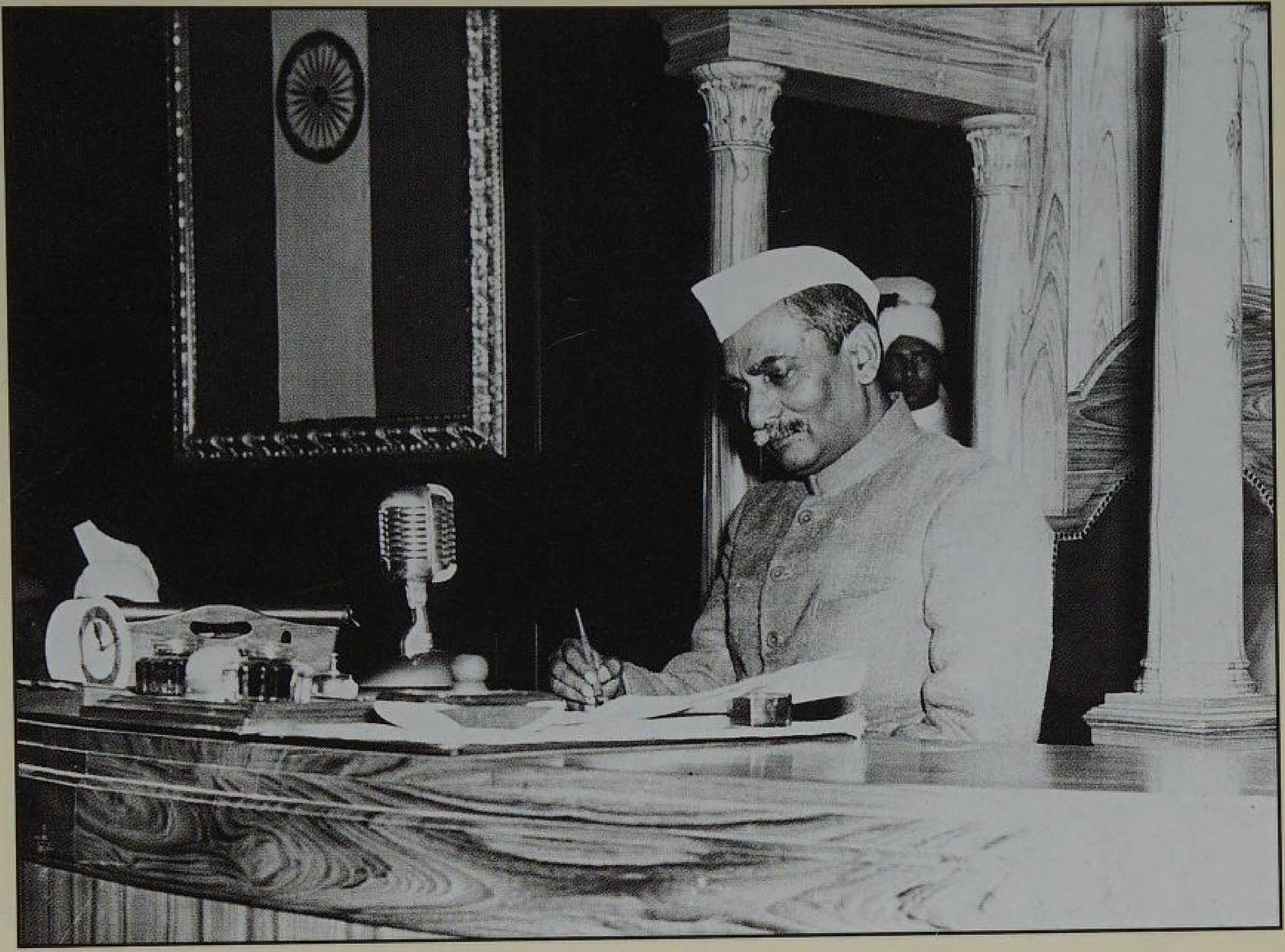
Pandit Jawaharlal Nehru with Maulana Abul Kalam Azad at the Constituent Assembly session

Pandit Jawaharlal Nehru addressing the mid-night session of the Constituent Assembly on 14-15 August 1947

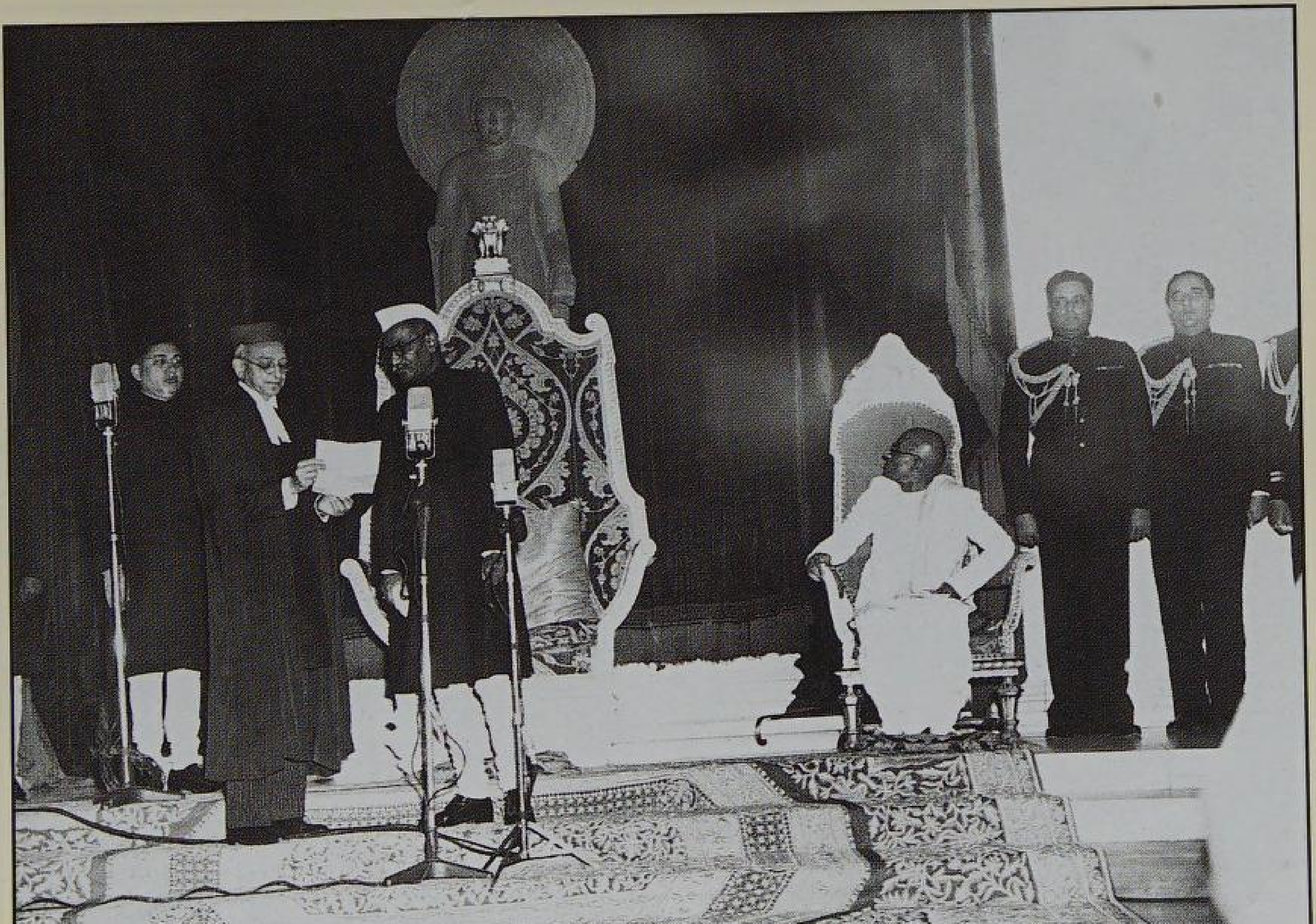
Pandit Jawaharlal Nehru presenting the Flag to the Constituent Assembly



The Labour Minister, Babu Jagjivan Ram felicitating Dr. Rajendra Prasad on the passing of the Constitution.



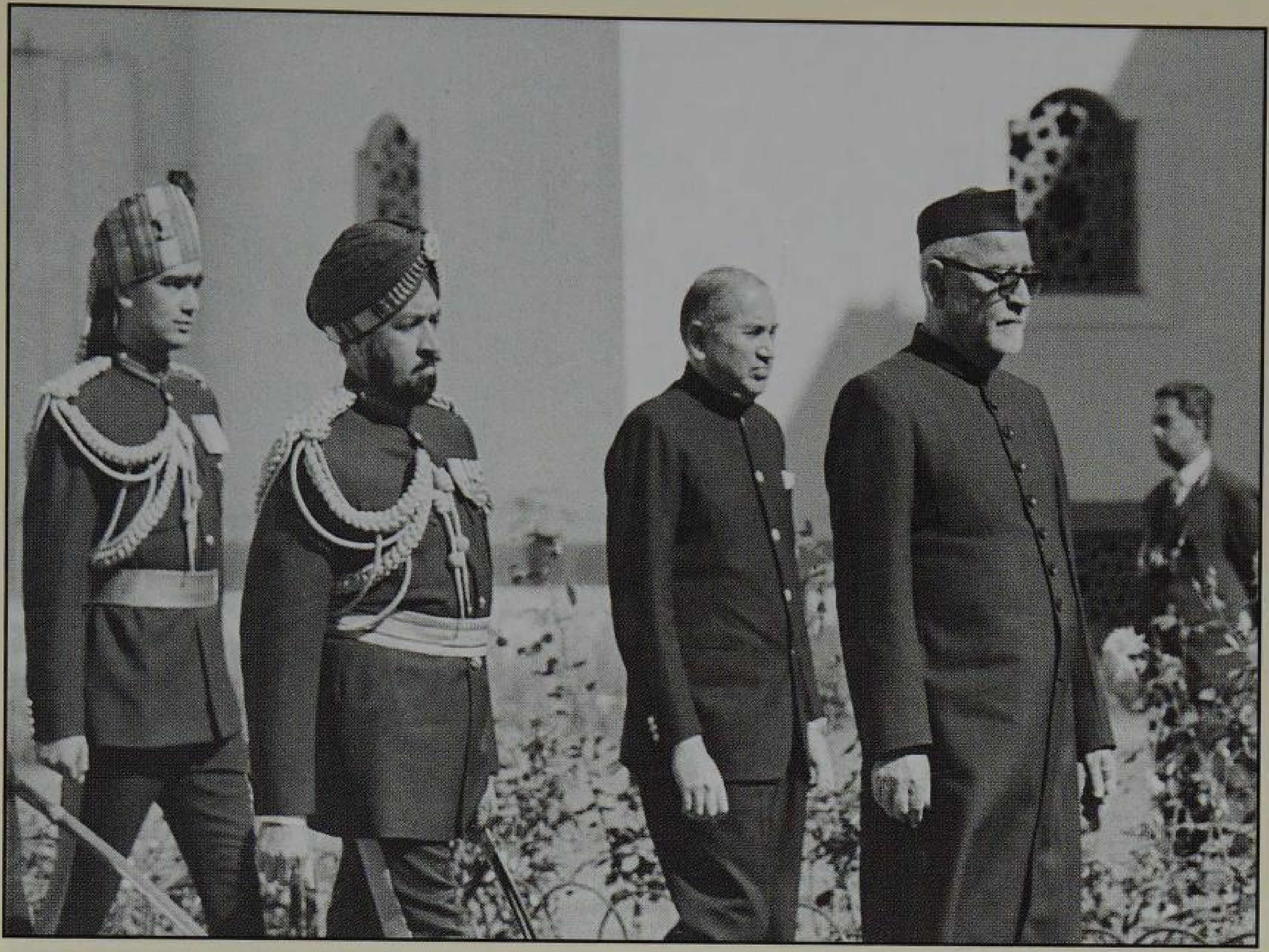
Dr. Rajendra Prasad signing the Constitution of India, as passed by the Constituent Assembly



The Chief Justice of India, administering the oath of office to the first President of India, Dr. Rajendra Prasad, in the Darbar Hall, Government House, on 26 January 1950

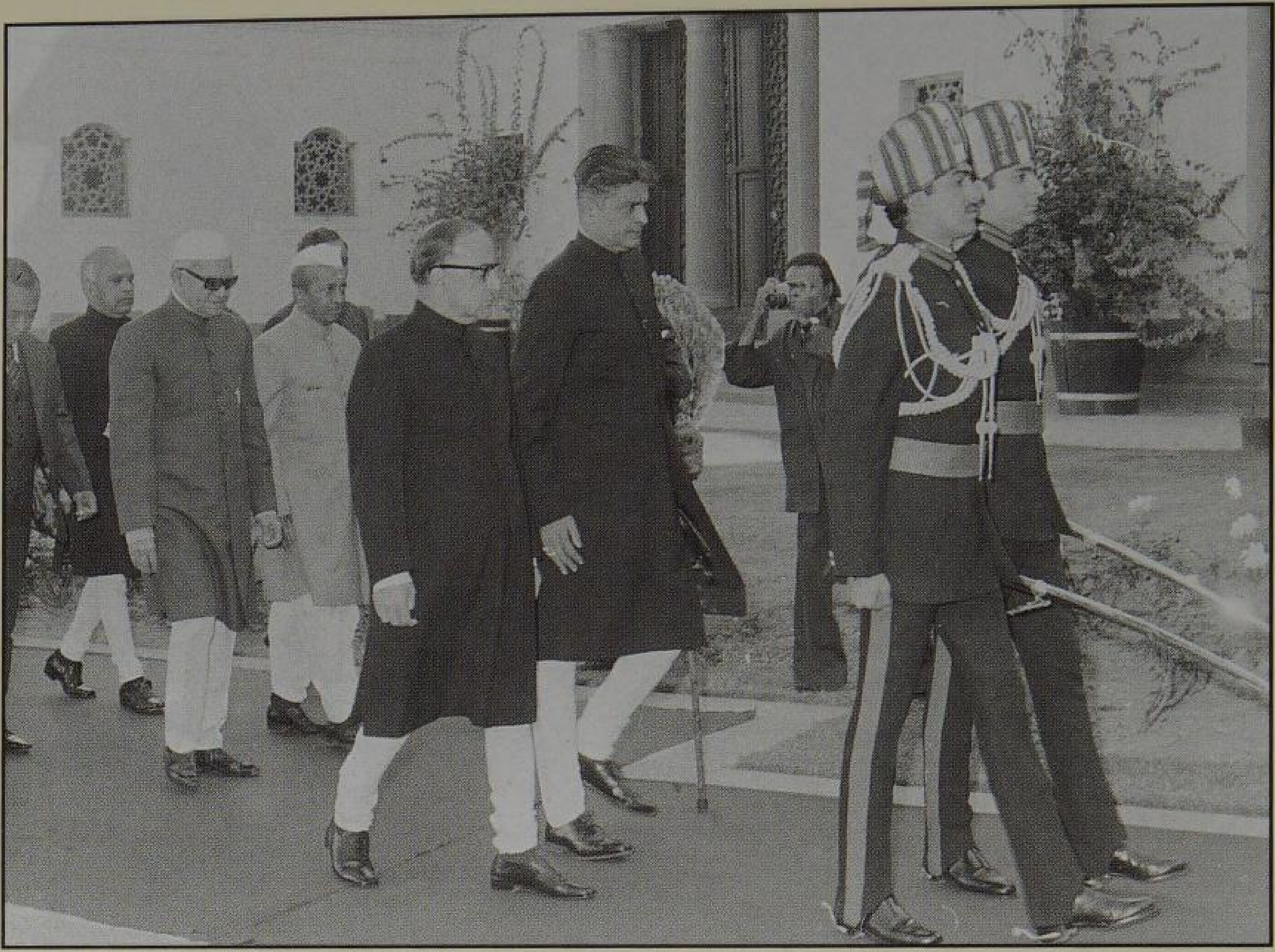
The President, Dr. Rajendra Prasad, driving in State from Parliament House to Rashtrapati Bhawan on 13 May 1952

The President, Dr. S. Radhakrishnan, arriving in procession to address members of Parliament in the Central Hall on 14 February 1966



The President, Dr. Zakir Husain, arriving in a ceremonial procession to address members of Parliament in the Central Hall on 12 February 1968

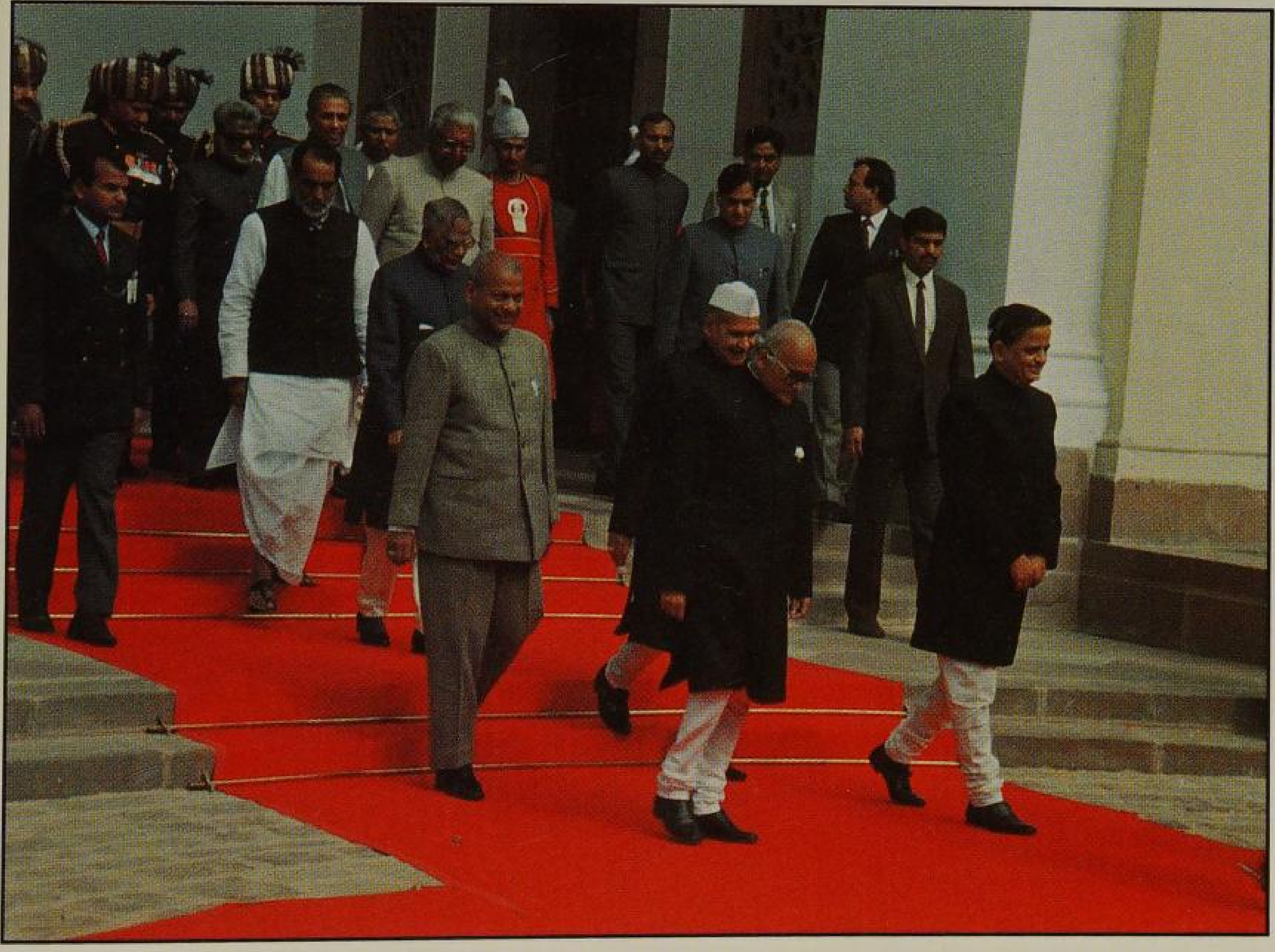
The President, Shri V. V. Giri arriving in procession to address the members of Parliament on 20 February 1970



The President, Shri Fakhruddin Ali Ahmed in Parliament House to address members of Parliament on 5 January 1976

The President, Dr. N. Sanjiva Reddy in Parliament House on 20 February 1978 to address members of Parliament

The President, Giani Zail Singh, arriving in ceremonial procession to address members of Parliament on 20 February 1986



The President, Shri R. Venkataraman arriving in procession to address members of Parliament on 21 February 1991

The President, Dr. Shanker Dayal Sharma, arriving in ceremonial procession on 22 February 1993 to address members of Parliament

The President, Shri K.R. Narayanan arriving in procession to address members of Parliament on 23 February 2000

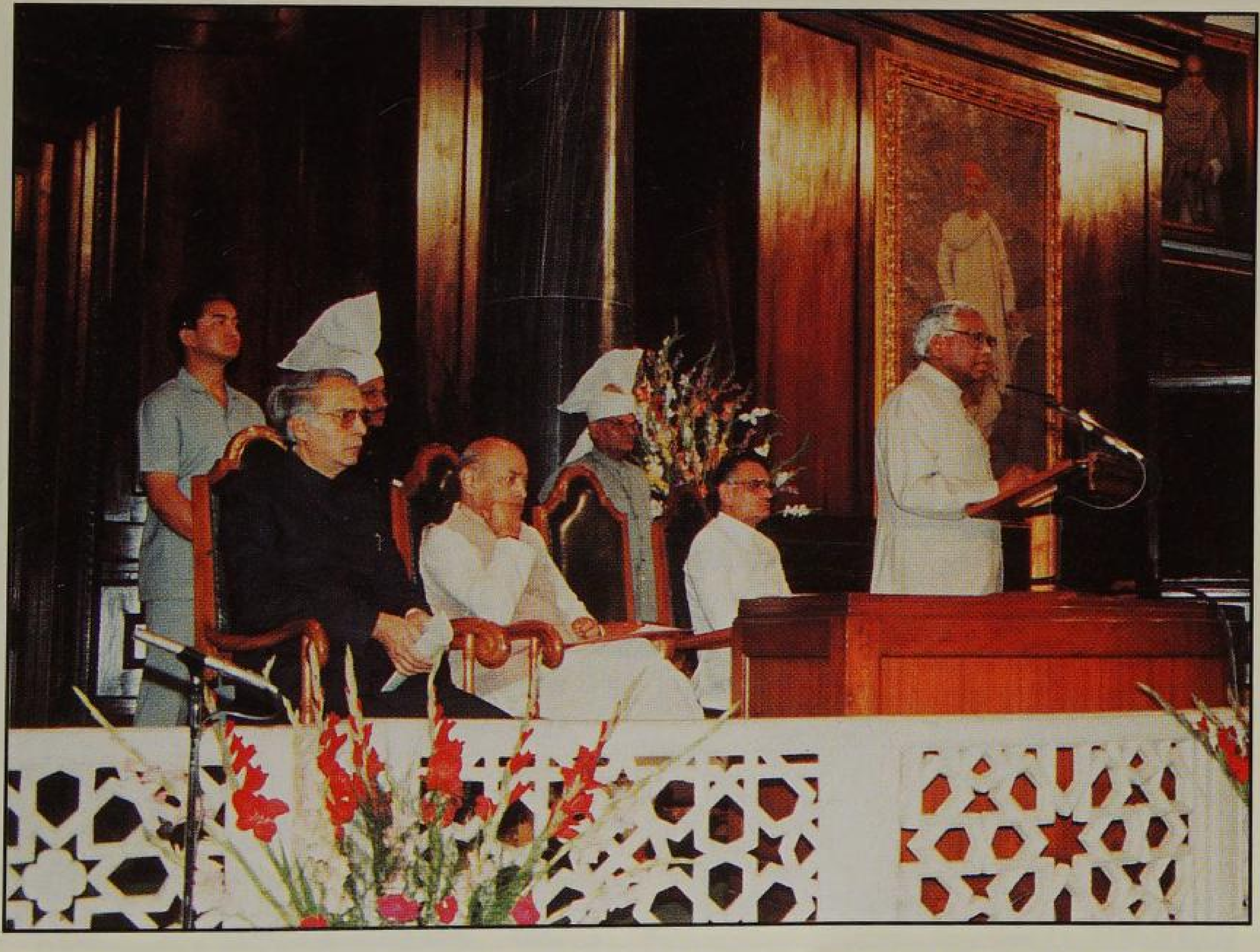
Members of the Public Accounts Committee on a site visit at the Bhakra Nangal Project in April 1955

The Lok Sabha Speaker, Shri K.S. Hegde inaugurating the Financial Committees for the year 1977-1978 in Parliament House on 4 August 1977

The Lok Sabha Speaker, Dr. Bal Ram Jakhar addressing the Conference of Chairmen of Committees on Private Members Bills and Resolutions of the Parliament and the State Legislatures in New Delhi on 12 May 1982

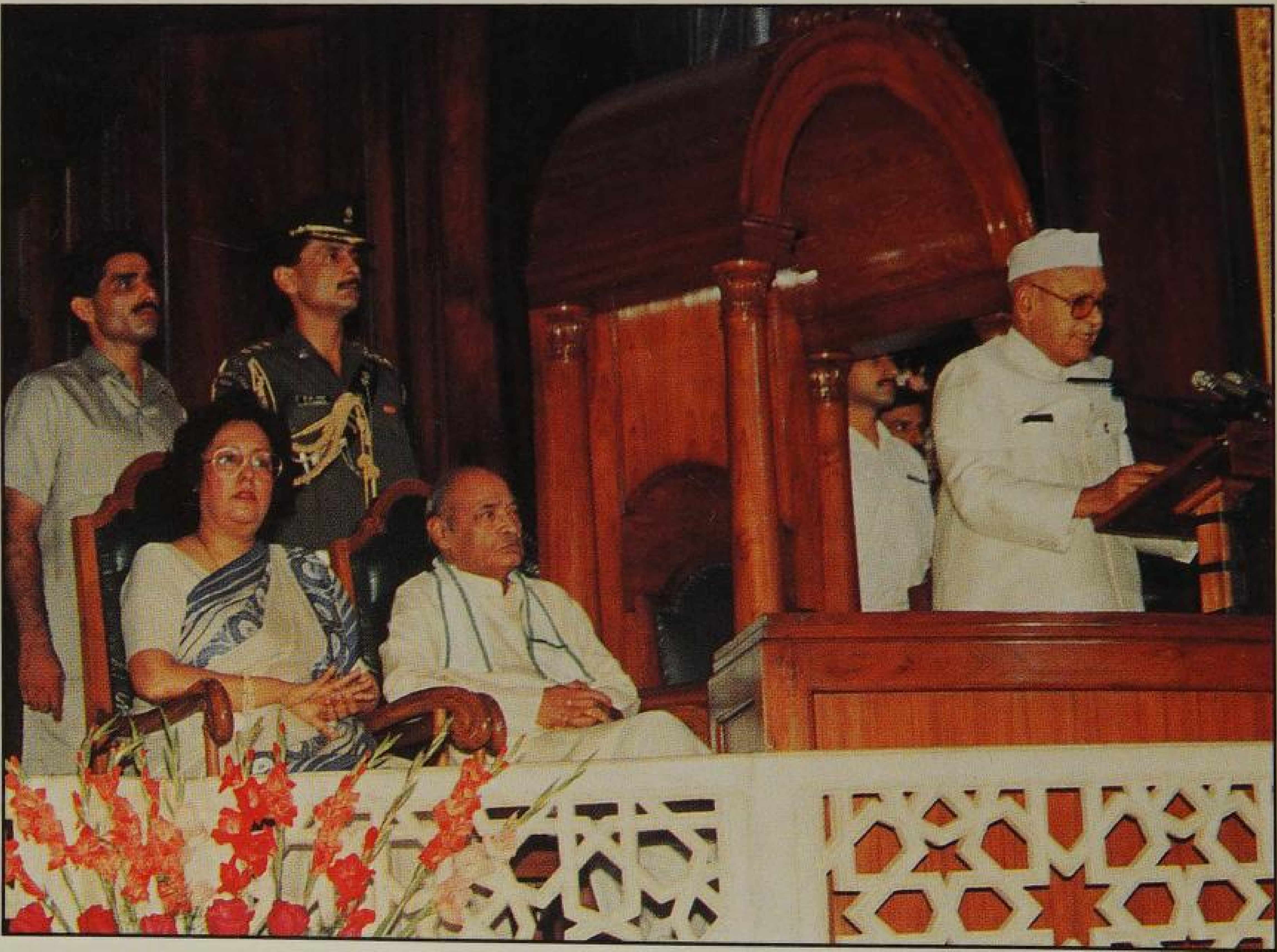
The members of the Committee on Subordinate Legislation at the State Bank of Hyderabad during a Study Tour in October 1986

The Lok Sabha Speaker, Shri Rabi Ray inaugurating the Committee on the Welfare of Scheduled Castes and Scheduled Tribes in New Delhi on 29 May 1990



The then Vice-President of India, Shri K.R. Narayanan inaugurating the 17 newly constituted Departmentally-Related Standing Committees of Parliament at a function held in the Central Hall on 31 March 1993

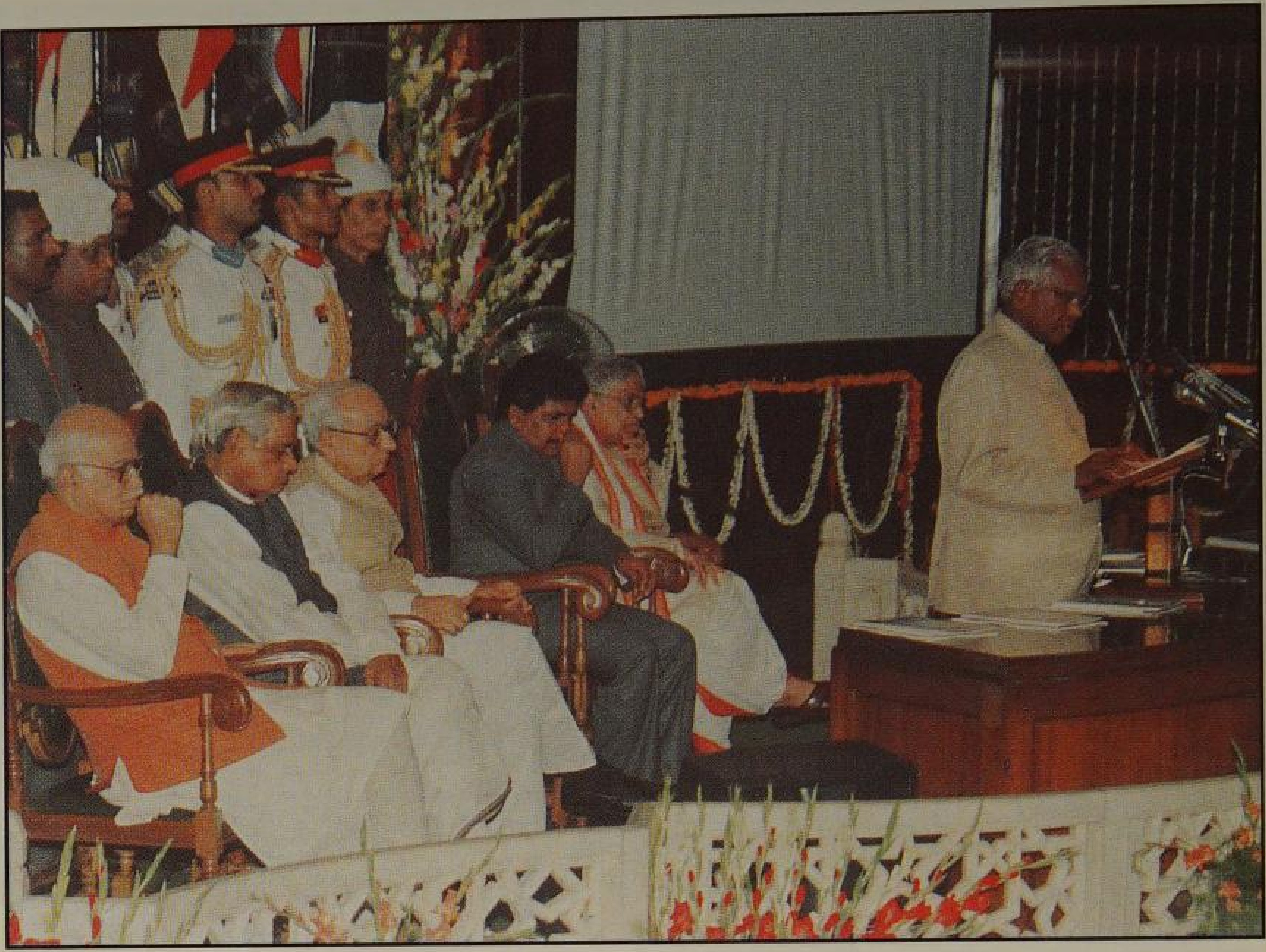
The President, Shri Fakhruddin Ali Ahmed addressing members of Parliament in the Central Hall on 26 February 1975 on the occasion of the 25th Anniversary of the Constitution and Parliament



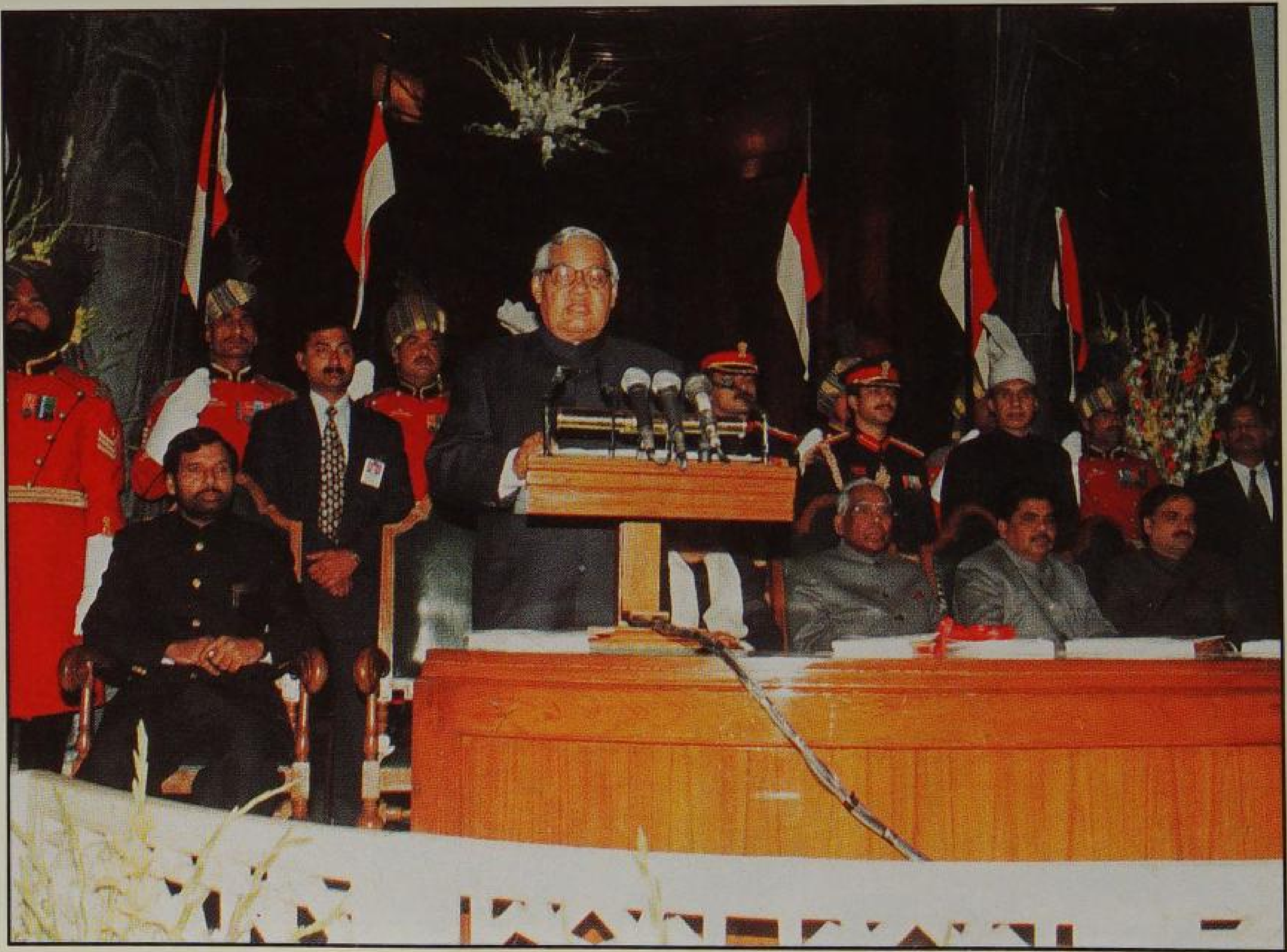
The President, Dr. Shanker Dayal Sharma addressing the distinguished gathering in the Central Hall of Parliament House on 8 August 1992 on the occasion of the Golden Jubilee of the Quit India Movement

The Vice-President, Shri K.R. Narayanan at the function to mark the 50th Anniversary of the First Sitting of the Constituent Assembly, 9 December 1996

The President, Shri K.R. Narayanan addressing the distinguished gathering in the Central Hall on 14-15 August 1997 on the occasion of the Golden Jubilee of Independence



The President, Shri K.R. Narayanan addressing the dignitaries in the Central Hall on 15 August 1998 at the conclusion of the Golden Jubilee Celebrations of Independence



The Prime Minister, Shri Atal Bihari Vajpayee addressing the distinguished gathering in the Central Hall on 27 January 2000 at the function to mark the Golden Jubilee of the Republic of India

The Prime Minister, Shri P. V. Narasimha Rao conferring the Bharat Ratna Pt. Govind Ballabh Pant Outstanding Parliamentarian Award on Shri Indrajit Gupta in the Central Hall on 23 September 1992

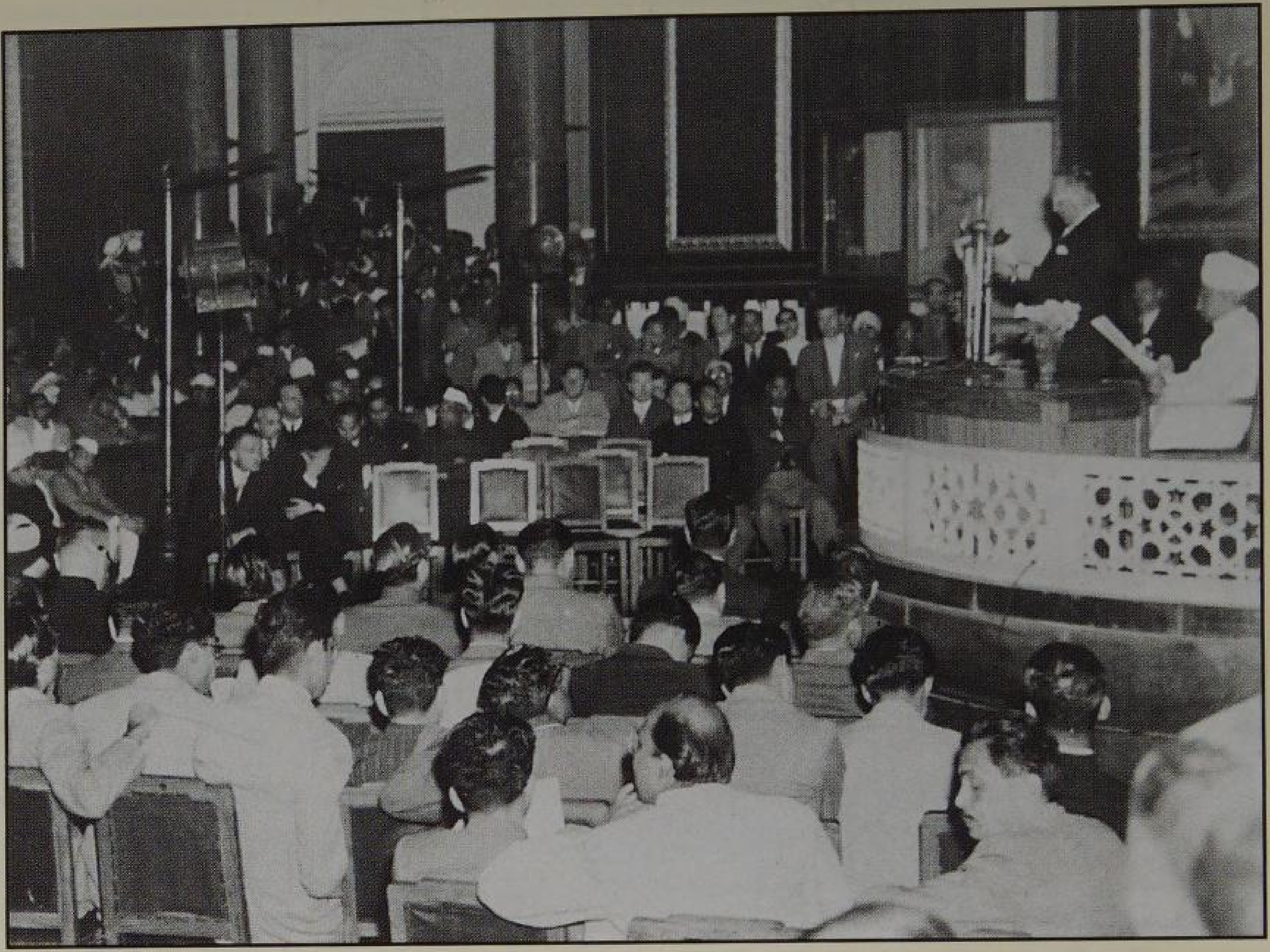
The Prime Minister, Shri P.V. Narasimha Rao conferring the Bharat Ratna Pt. Govind Ballabh Pant Best Parliamentarian Award for the year 1994 on Shri Atal Bihari Vajpayee on 17 August 1994

The President, Dr. Shanker Dayal Sharma conferring the Indian Parliamentary Group's (IPG) Outstanding Parliamentarian Award 1995 on Shri Chandra Shekhar on 12 December 1995

Shri Somnath Chatterjee receiving the IPG's Outstanding Parliamentarian Award 1996 from the President, Dr. Shanker Dayal Sharma on 19 March 1997

Shri Pranab Kumar Mukherjee and Shri S. Jaipal Reddy with the IPG's Outstanding Parliamentarian Awards for the years 1997 and 1998, respectively, conferred on them on 17 December 1999

The President, Dr. Shanker Dayal Sharma unveiling the portrait of former Prime Minister, Chaudhary Charan Singh in the Central Hall on 23 December 1993



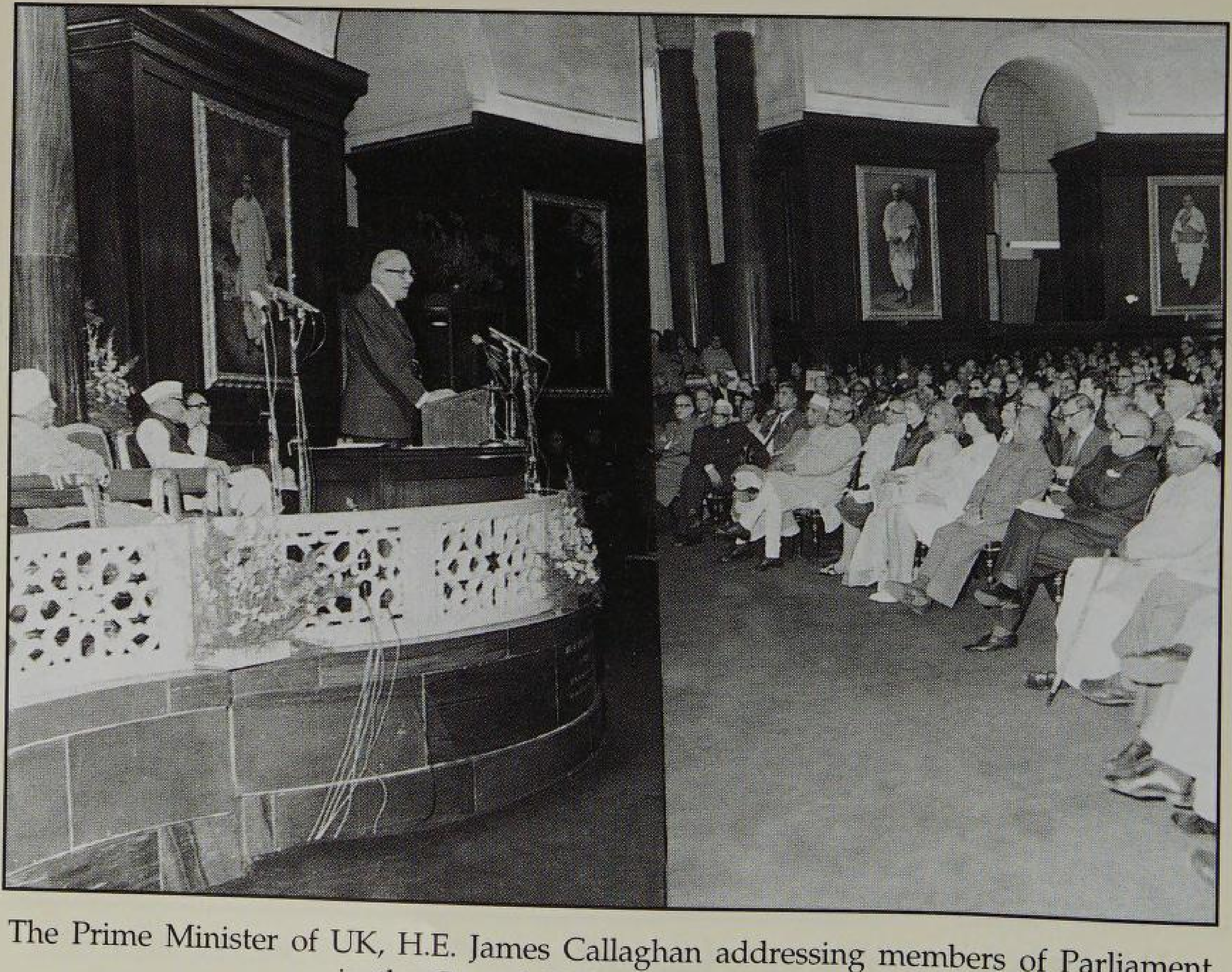
The President of Yugoslavia, H.E. Marshal Tito addressing members of Parliament in the Central Hall on 21 December 1954

H.E. Nikita Khrushchev, Member of the Presidium of the Supreme Soviet of the USSR, addressing the distinguished gathering in the Central Hall on 21 November 1955

The Prime Minister of Canada, H.E. John G. Diefenbaker addressing members of Parliament in the Central Hall on 21 November 1958

H.E. Haile Selassie, Emperor of Ethiopia, addressing members of Parliament in the Central Hall on 30 April 1968

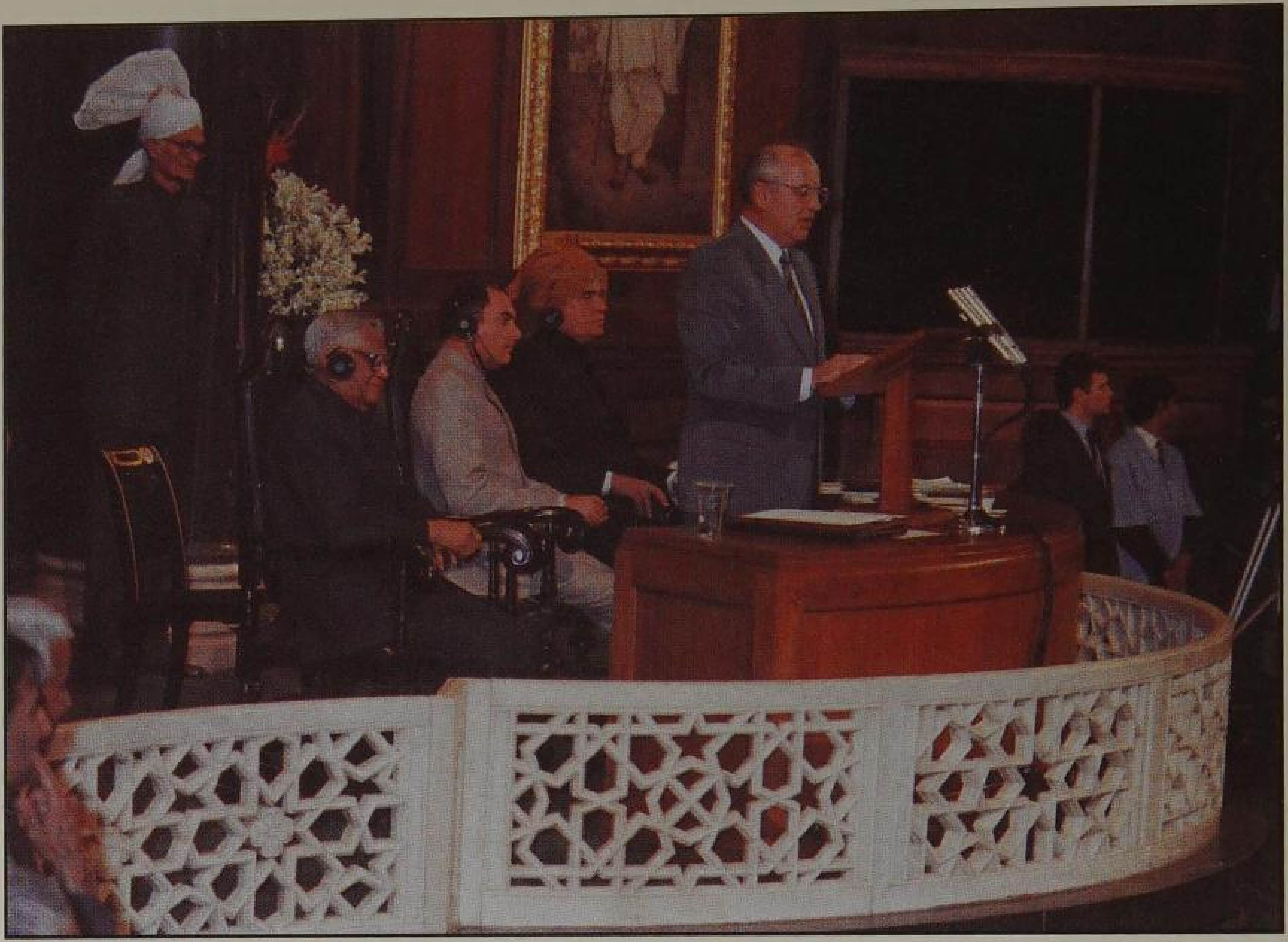
H.E. Jimmy Carter, President of USA, addressing members of Parliament in the Central Hall on 2 January 1978



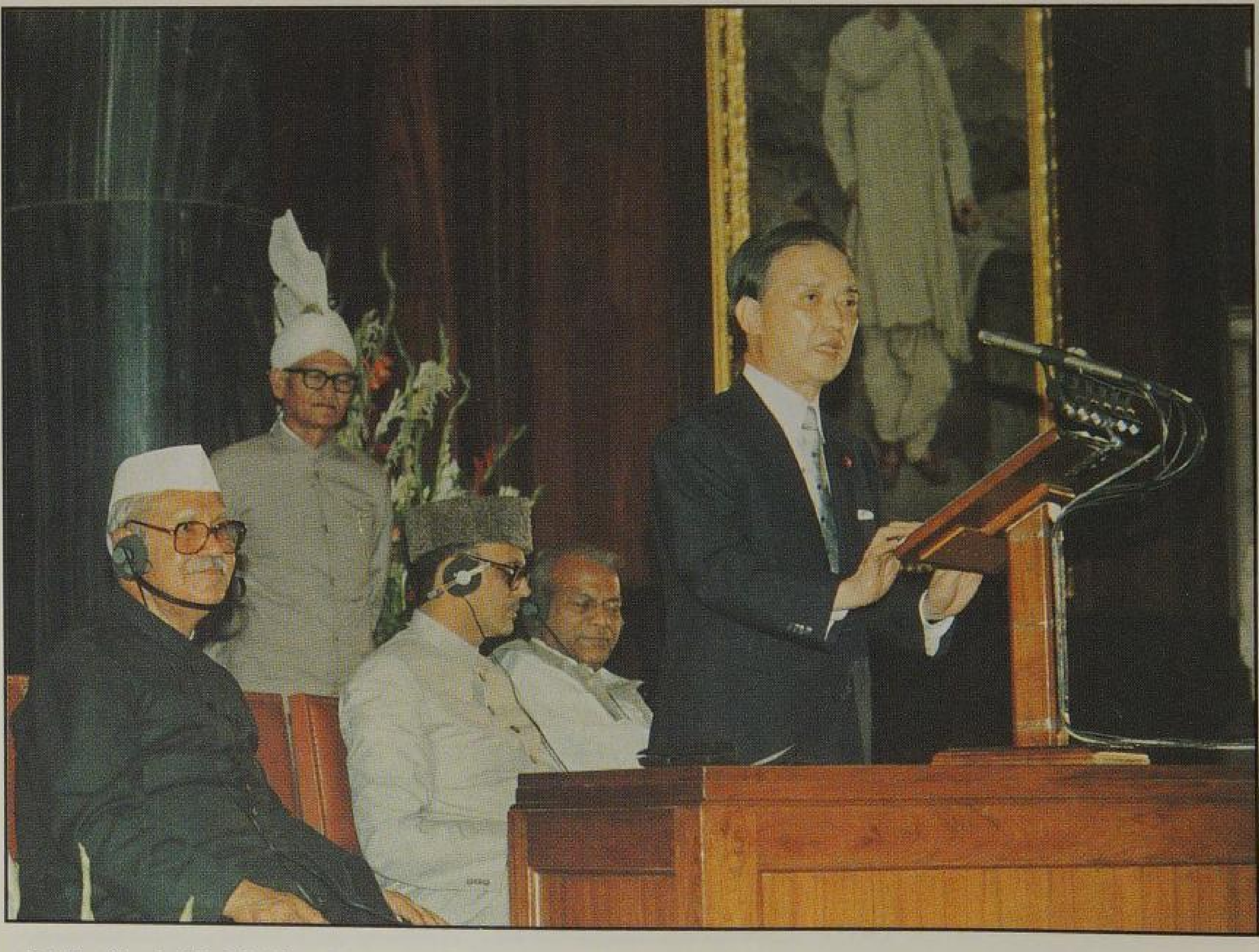
The Prime Minister of UK, H.E. James Callaghan addressing members of Parliament in the Central Hall on 9 January 1978

The Prime Minister of Australia, H.E. Malcolm Fraser addressing members of Parliament in the Central Hall on 27 January 1979

H.E. Francois Mitterand, President of France, addressing members of Parliament in the Central Hall on 29 November 1982



H.E. Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union, addressing members of Parliament in the Central Hall on 27 November 1986

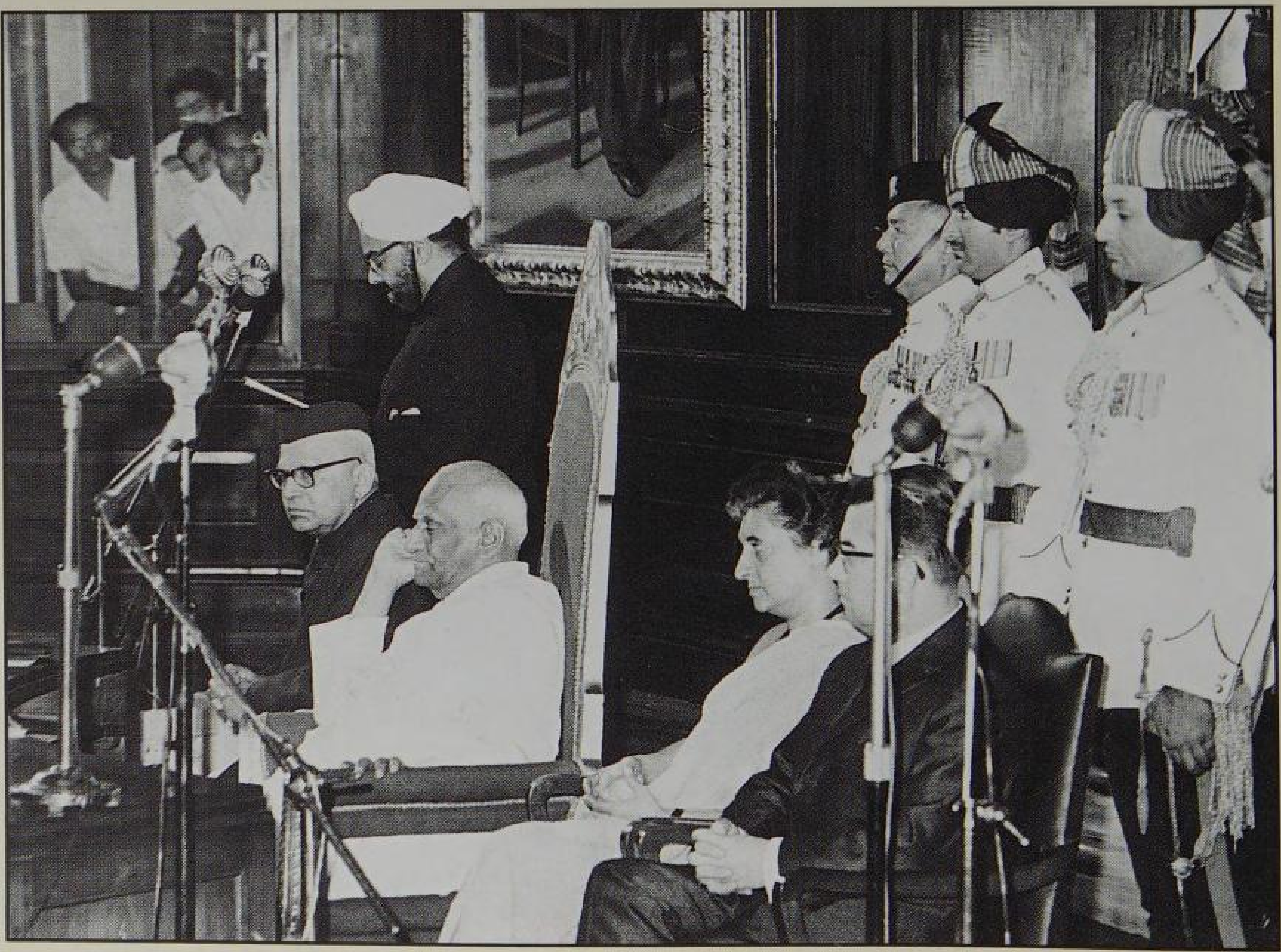


H.E. Toshiki Kaifu, Prime Minister of Japan, addressing members of Parliament in the Central Hall on 30 April 1990

US President, H.E. Bill Clinton addressing members of Parliament in the Central Hall on 22 March 2000

H.E. Vladimir Putin, President of the Russian Federation, addressing members of Parliament in the Central Hall on 4 October 2000

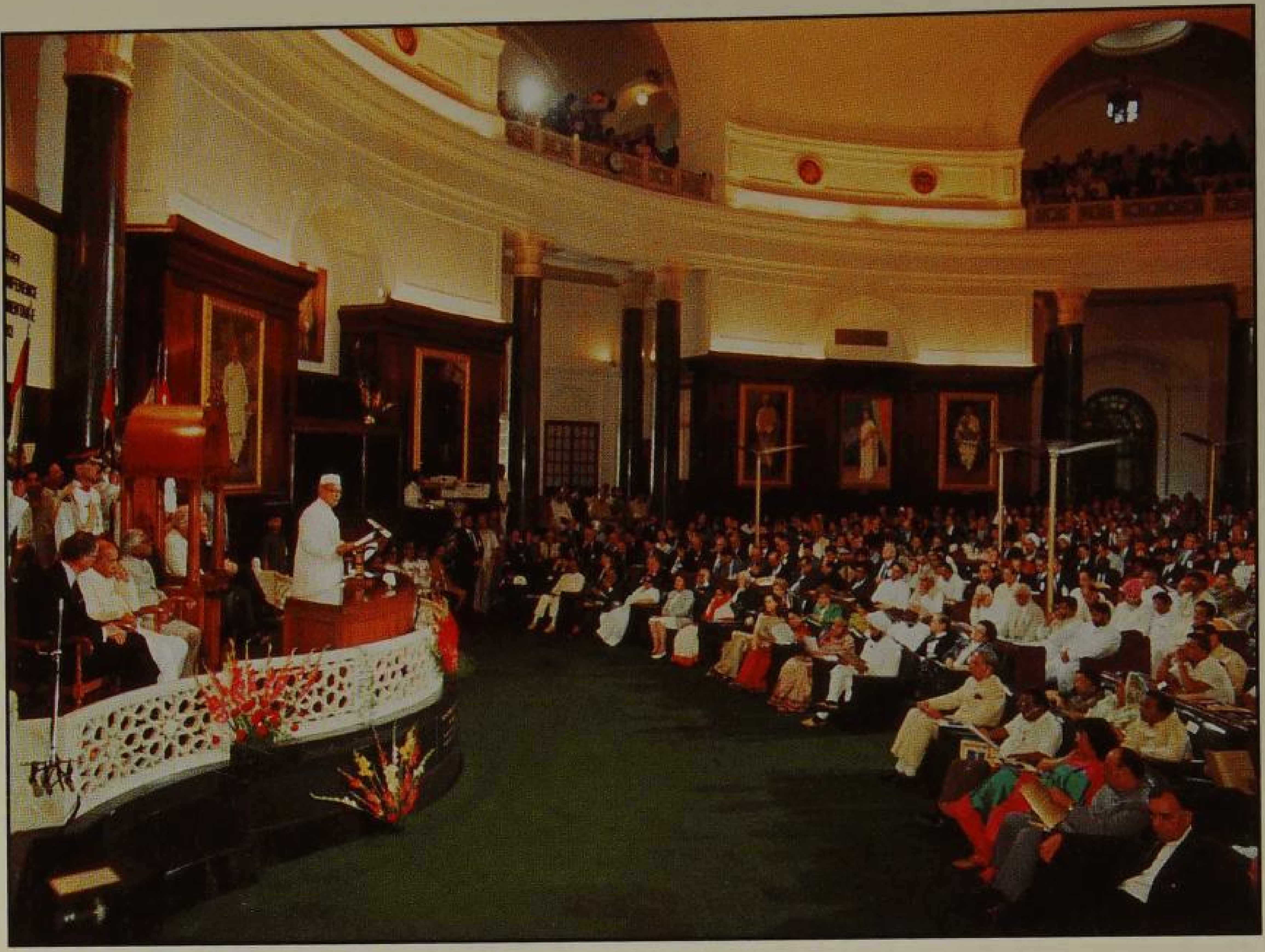
The Prime Minister, Pandit Jawaharlal Nehru addressing the delegates to the 17th Commonwealth Parliamentary Conference at the Vigyan Bhawan, New Delhi in December 1957



The Lok Sabha Speaker, Dr. G.S. Dhillon at the inaugural session of the 57th Inter-Parliamentary Union Conference, 1969, New Delhi

The Lok Sabha Speaker, Dr. G.S. Dhillon welcoming the delegates to the 21st Commonwealth Parliamentary Conference in the Central Hall on 28 October 1975

The Prime Minister, Shri P.V. Narasimha Rao addressing delegates at the inaugural function of the 37th Commonwealth Parliamentary Conference on 24 September 1991



The President, Dr. Shanker Dayal Sharma inaugurating the 89th Inter-Parliamentary Conference on 12 April 1992

सार्क संसद अध्यक्षों एवं सांसदों के संघ का प्रथम सम्मेलन
नई दिल्ली, 22-24 जुलाई 1995
FIRST CONFERENCE OF
THE ASSOCIATION OF SAARC SPEAKERS AN PARLIAMENTARIANS
New Delhi, 22-24 July 19

The Prime Minister, Shri P.V. Narasimha Rao inaugurating the First Conference of the Association of SAARC Speakers and Parliamentarians in the Central Hall on 22 July 1995

INTER-PARLIAMENTARY SPECIALIZED CONFERENCE ON
"TOWARDS PARTNERSHIP BETWEEN MEN AND WOMEN IN POLITICS"
NEW DELHI, 14 - 18 FEBRUARY, 1997
CONFÉRENCE INTERPARLEMENTAIRE SPÉCIALISÉE SUR LE THÈME
"VERS UN PARTENARIAT ENTRE HOMMES ET FEMMES EN POLITIQUE"
NEW DELHI, 18 FÉVRIER 199

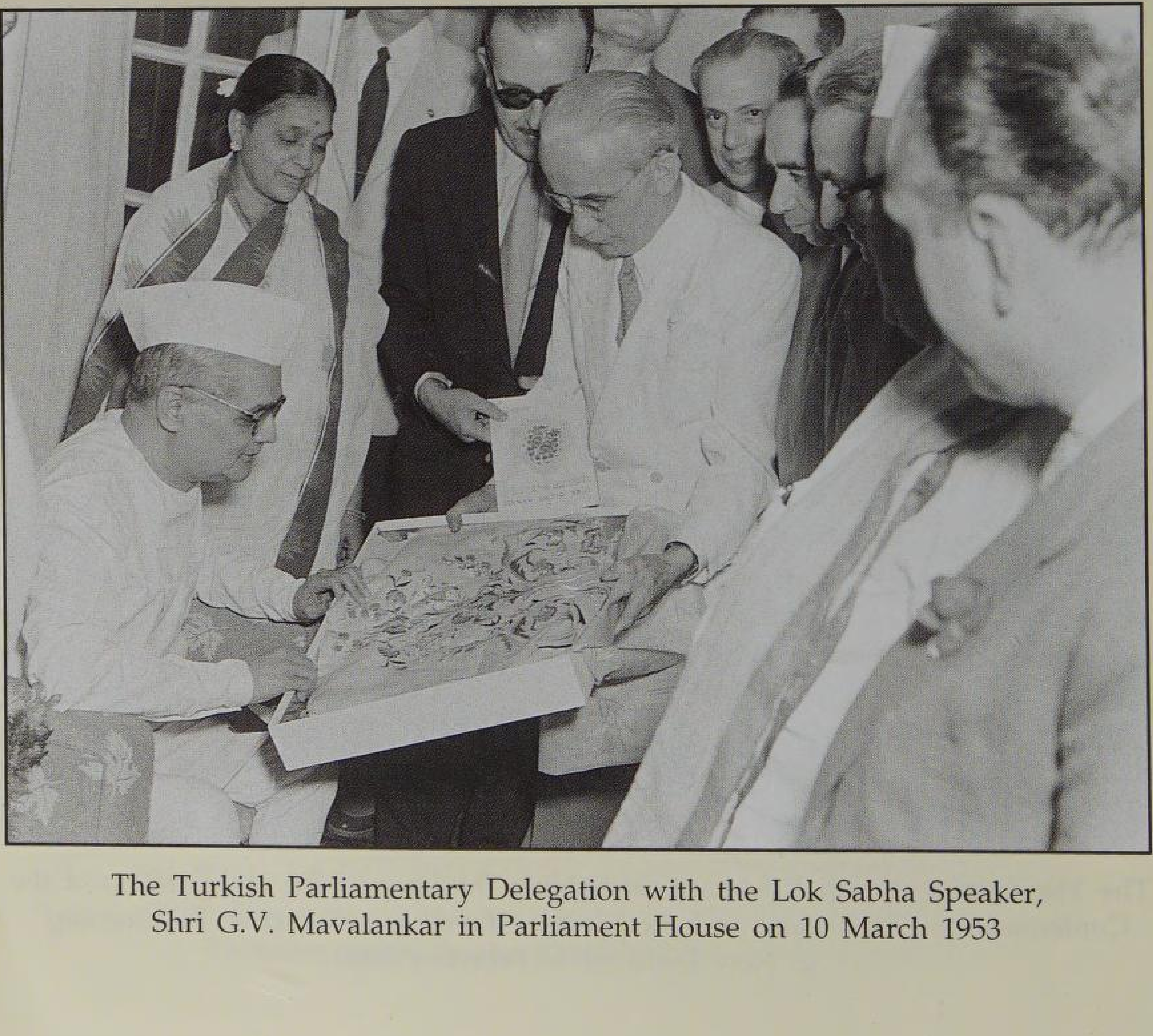
The Lok Sabha Speaker, Shri P.A. Sangma at the inaugural function of the Inter-Parliamentary Specialized Conference on "Towards Partnership between Men and Women in Politics" on 14 February 1997

CONFERENCE ON
"PARLIAMENT AND THE MEDIA:
BUILDING AN EFFECTIVE RELATIONSHIP"
New Delhi, 14 - 18 February, 2000

The Vice-President, Shri Krishan Kant lighting the lamp at the inauguration of the Conference on "Parliament and the Media : Building an Effective Relationship" in New Delhi on 14 February 2000

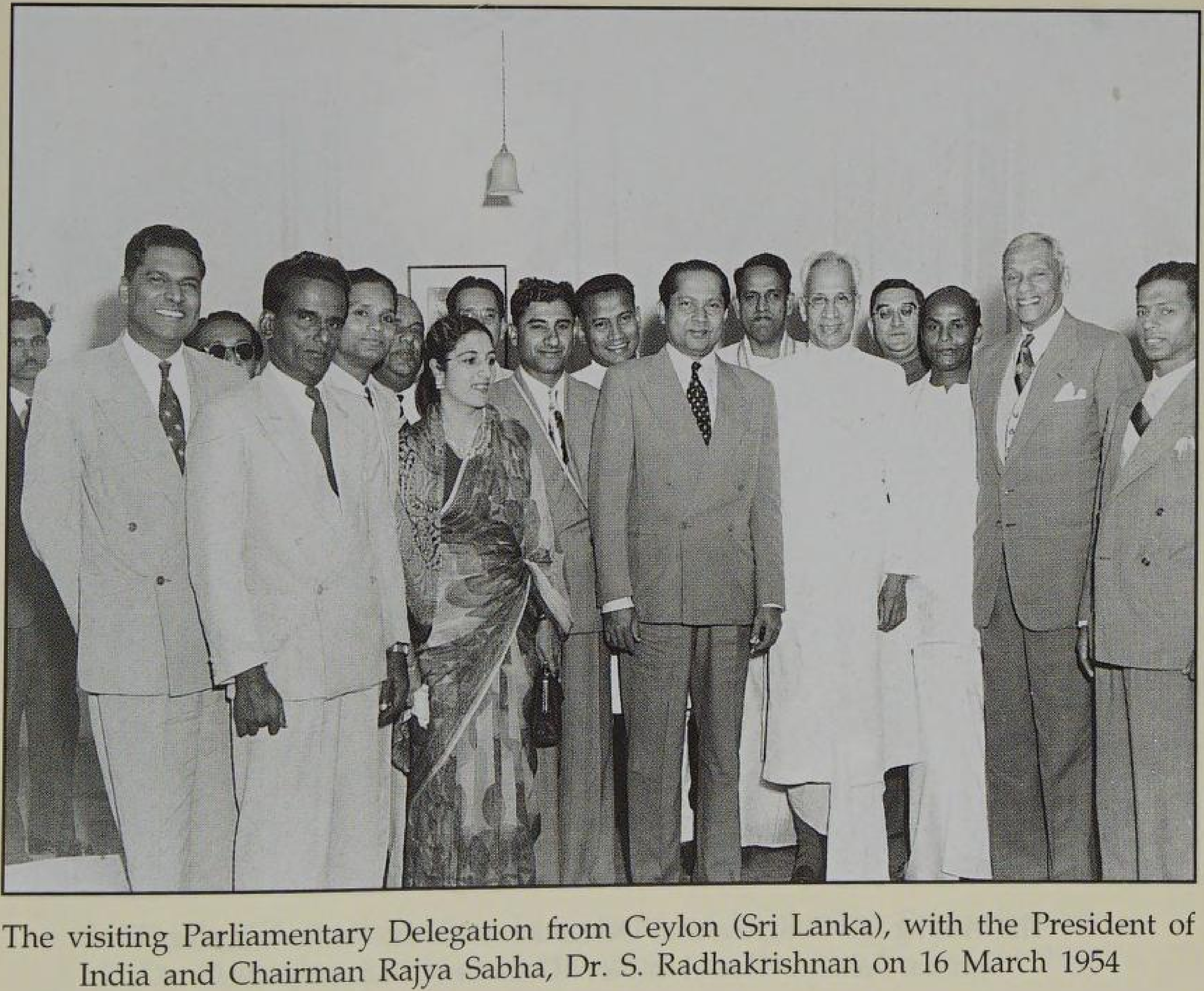
on Environment
Hyderabad, 13

The Vice-President, Shri Krishan Kant inaugurating the Asia-Pacific Parliamentarians Conference on Environment and Development, in Hyderabad, November 2000



The Turkish Parliamentary Delegation with the Lok Sabha Speaker, Shri G.V. Mavalankar in Parliament House on 10 March 1953

The Turkish Parliamentary Delegation with the Prime Minister, Pandit Jawaharlal Nehru in New Delhi on 12 March 1953

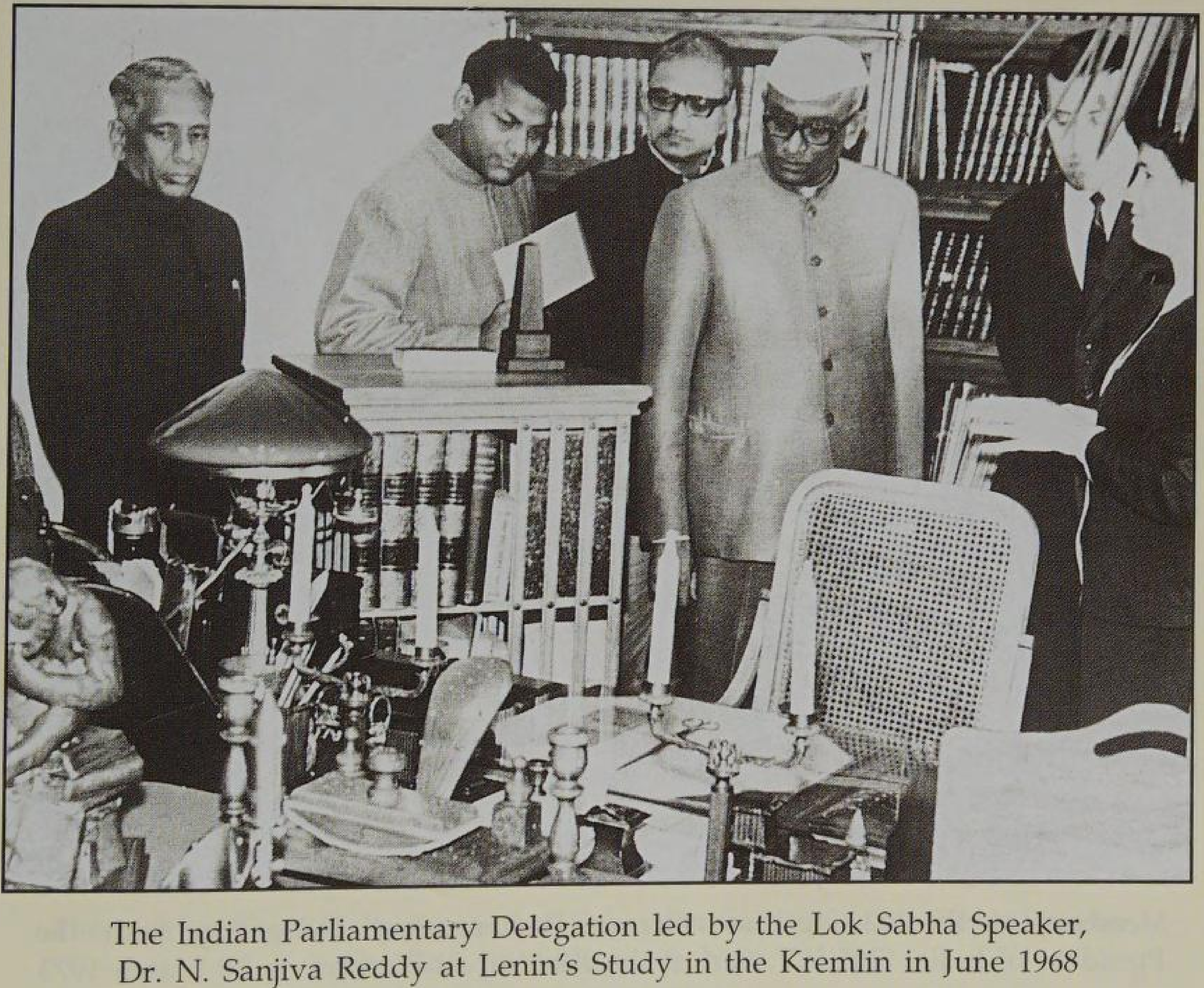


The visiting Parliamentary Delegation from Ceylon (Sri Lanka), with the President of India and Chairman Rajya Sabha, Dr. S. Radhakrishnan on 16 March 1954

Members of the Indian Parliamentary Delegation with Chairman Mao Zedong of China in Beijing in October 1956

The visiting US Congressional Delegation with the Prime Minister, Shri Lal Bahadur Shastri in New Delhi on 4 December 1965

Members of the visiting Tanzanian Parliamentary Delegation with the Lok Sabha Speaker, Sardar Hukam Singh in New Delhi on 17 November 1965



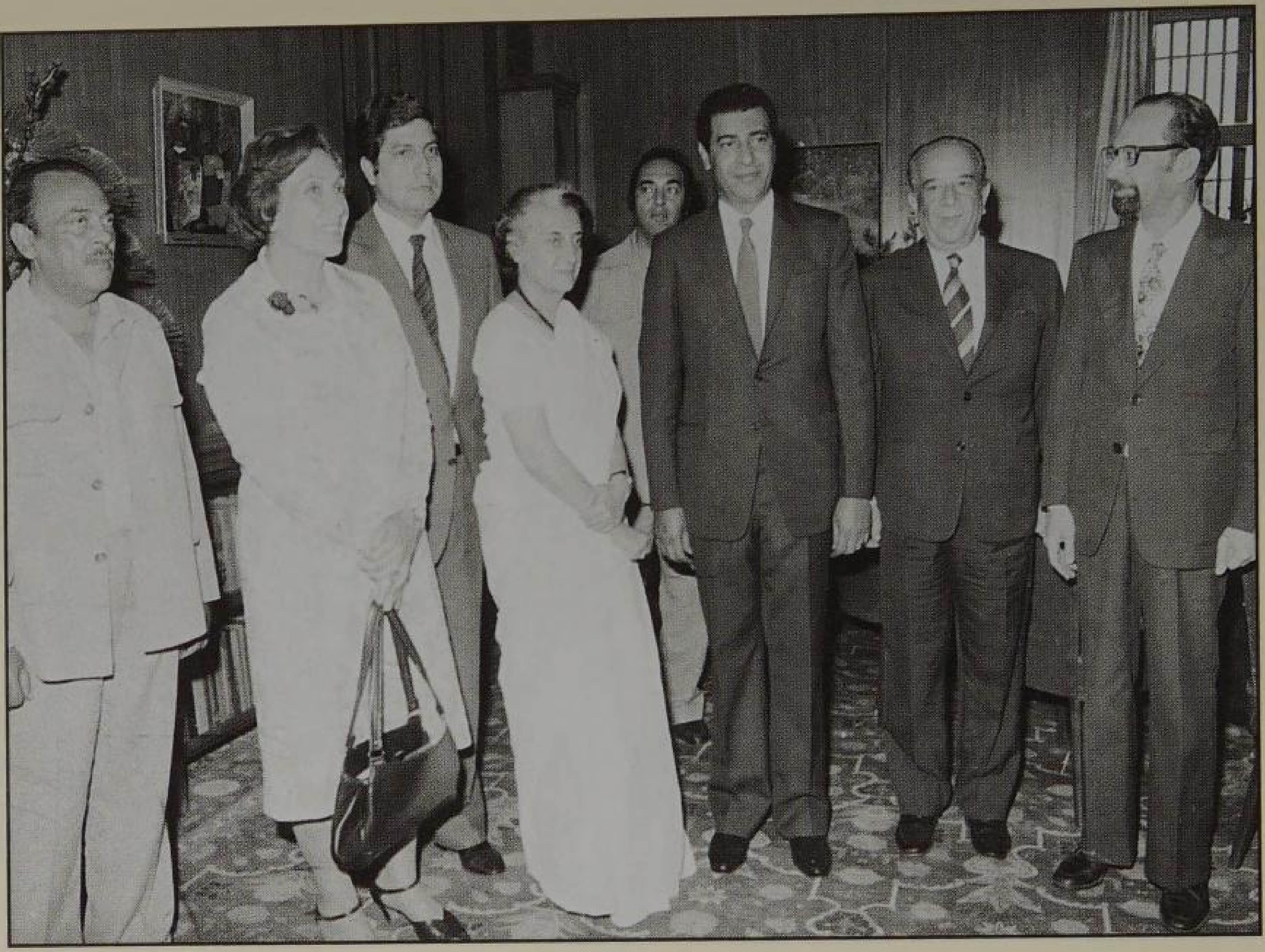
The Indian Parliamentary Delegation led by the Lok Sabha Speaker, Dr. N. Sanjiva Reddy at Lenin's Study in the Kremlin in June 1968

The Speaker of the Fijian Parliament, Mr. R.D. Patel with the Vice-President of India and Chairman, Rajya Sabha, Shri G.S. Pathak in New Delhi on 19 August 1972

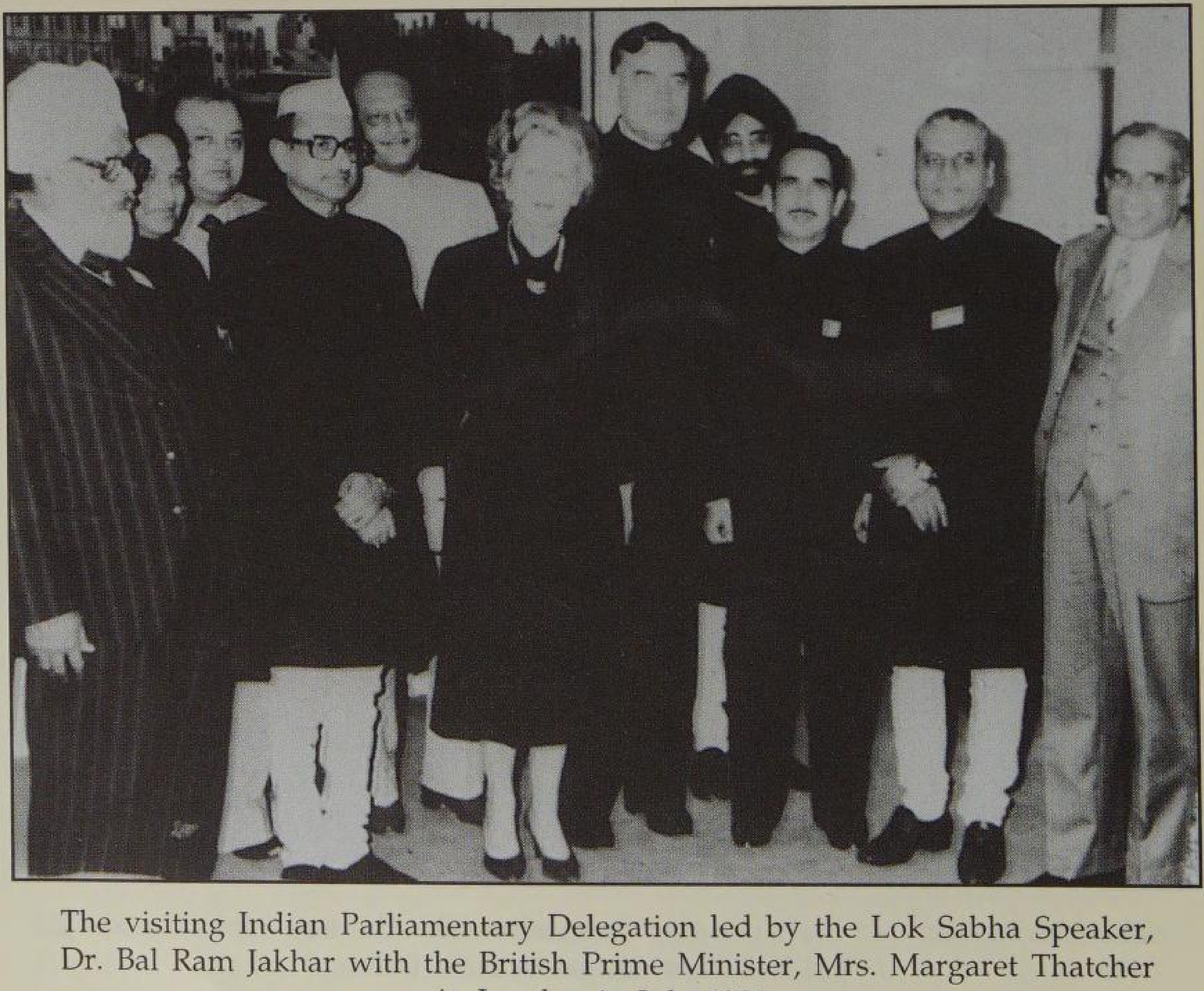
Members of the visiting East German Parliamentary Delegation with the President of India, Shri V.V. Giri at the Rashtrapati Bhawan on 30 March 1973

The Finnish Parliamentary Delegation with the Prime Minister, Shri Morarji Desai in New Delhi on 5 April 1977

The visiting Kuwaiti Parliamentary Delegation with the Lok Sabha Speaker, Shri Bali Ram Bhagat in New Delhi

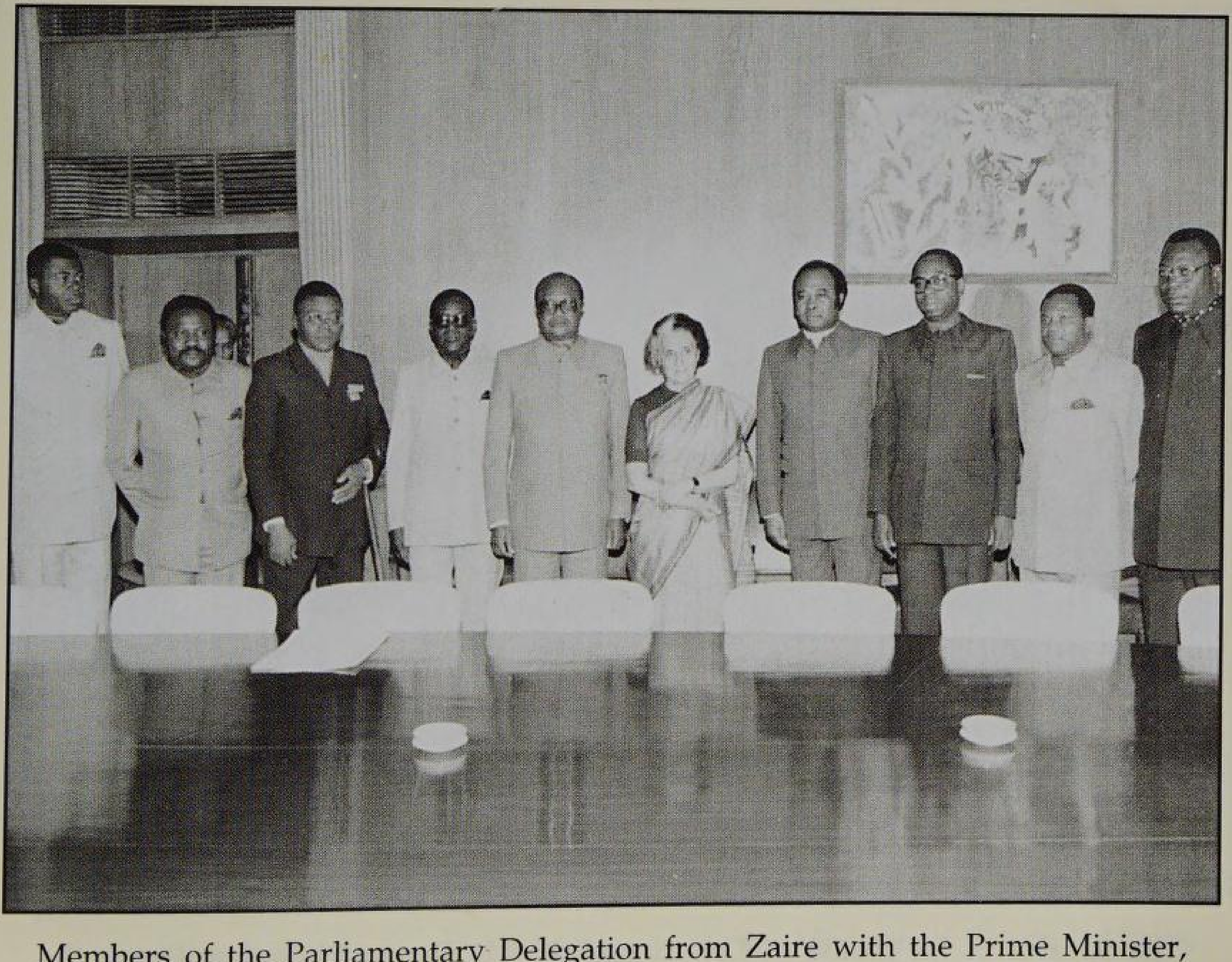


The visiting Egyptian Parliamentary Delegation with the Prime Minister, Smt. Indira Gandhi in New Delhi on 1 May 1981



The visiting Indian Parliamentary Delegation led by the Lok Sabha Speaker, Dr. Bal Ram Jakhar with the British Prime Minister, Mrs. Margaret Thatcher in London in July 1981

The Ghanian Parliamentary Delegation with the Vice-President of India and Chairman, Rajya Sabha, Shri M. Hidayatullah in New Delhi on 25 March 1981



Members of the Parliamentary Delegation from Zaire with the Prime Minister, Smt. Indira Gandhi in New Delhi on 9 February 1984

The visiting Indian Parliamentary Delegation with the Speaker of the Canadian Senate, Mr. Guy Charbonneau on 9 June 1987

The Speaker of the House of Commons, UK, Mr. Bernard Weatherill with the Prime Minister, Shri Rajiv Gandhi in New Delhi in August 1989

The Chairman of the Foreign Relations Committee of Iran, Mr. Khoresani with the Prime Minister, Shri Vishwanath Pratap Singh, in New Delhi on 29 October 1990

The Finnish Parliamentary Delegation with the Minister of External Affairs, Shri I.K. Gujral in New Delhi in February 1990

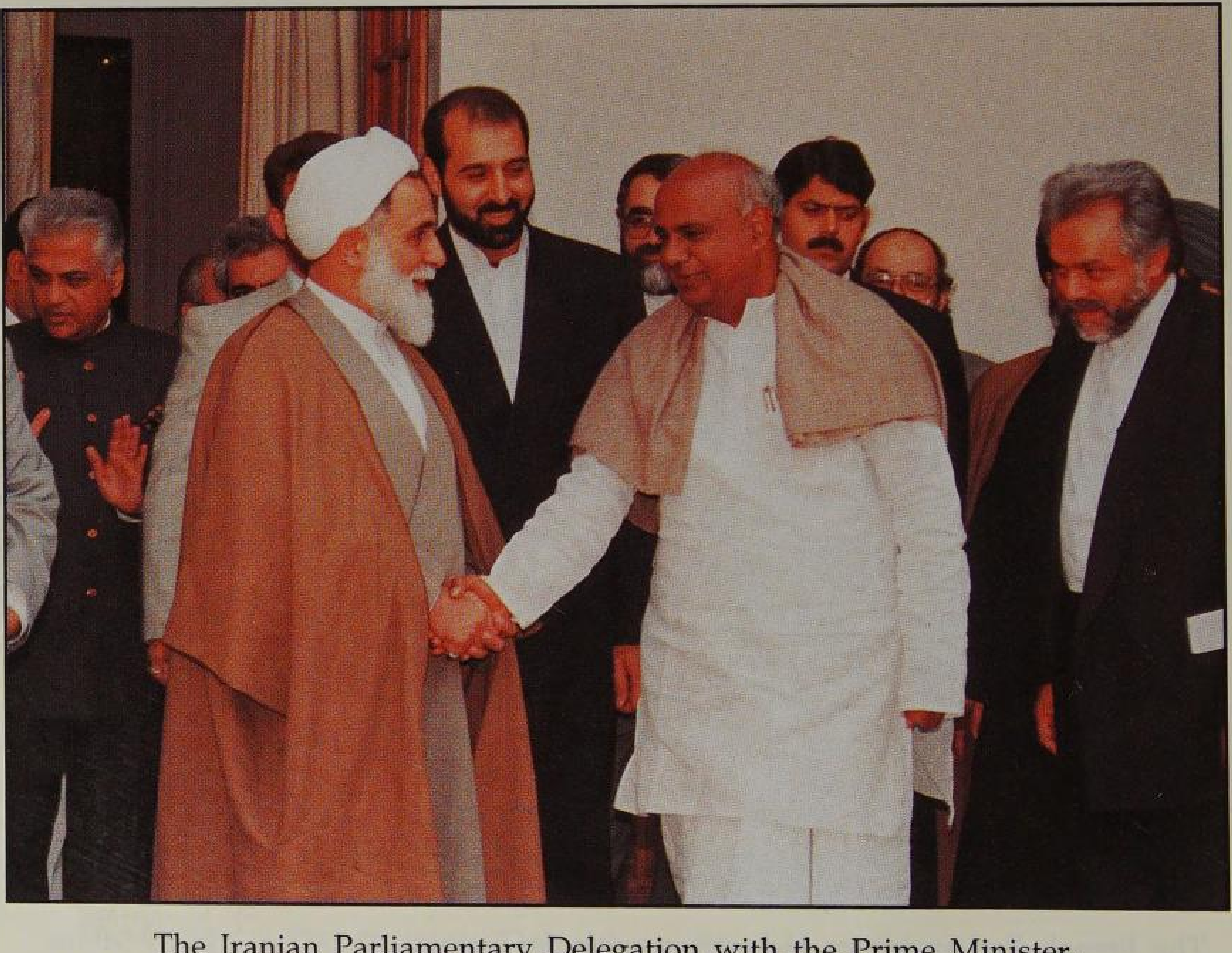
The visiting Parliamentary Delegation from the Republic of Korea with the Prime Minister, Shri Chandra Shekhar in New Delhi on 7 January 1991

The European Parliamentary Delegation with the Lok Sabha Speaker, Shri Shivraj V. Patil in New Delhi on 6 November 1991

The Canadian Parliamentary Delegation with the President, Dr. Shanker Dayal Sharma in New Delhi in 1993

The French Parliamentary Delegation with the Deputy Chairman, Rajya Sabha, Dr. Najma Heptulla in New Delhi on 7 February 1994

The visiting South African Parliamentary Delegation with the Vice-President of India and Chairman, Rajya Sabha, Shri K.R. Narayanan in New Delhi on 20 November 1995



The Iranian Parliamentary Delegation with the Prime Minister, Shri H.D. Deve Gowda in New Delhi in November 1996

The visiting Saudi Arabian Parliamentary Delegation with the Lok Sabha Speaker, Shri P.A. Sangma in New Delhi in March 1997

The visiting French Parliamentary Delegation with the Prime Minister, Shri Atal Bihari Vajpayee in New Delhi on 16 September 1998

The Kazakh Parliamentary Delegation with the Vice-President of India and Chairman, Rajya Sabha, Shri Krishan Kant in New Delhi on 5 December 2000

The Chairman of the Standing Committee of the National People's Congress of the People's Republic China, Mr. Li Peng with the Lok Sabha Speaker, Shri G.M.C. Balayogi and the Deputy Speaker, Shri P.M. Sayeed in New Delhi on 11 January 2001

PART IV : PARLIAMENT AT WORK—STRENGTHENING COMMITTEE SYSTEM

PARLIAMENTARY COMMITTEES—IMPACT OF RECOMMENDATIONS

Vijay Kumar Malhotra

Introduction

The essential feature of a parliamentary system is the accountability of the Executive to Parliament and from this emanates the right of the Parliament to oversee and scrutinise the way in which the Executive functions. The Parliament embodies the will of the people and, therefore, it should supervise the manner in which the public policy as sanctioned by the representatives of the people is carried out. Due to the magnitude and variety of activities of the State and owing to the paucity of time at the disposal of Parliament, the Parliament as a whole finds it not easily viable to scrutinise the functioning of the Executive effectively. Therefore, Parliament has constituted a number of Committees which have been assigned various activities of the Government to supervise. The Committee System, over the years, has fulfilled this objective successfully. The Committees have been able to influence Government policies, programmes and the method of working of the Government to a very great extent through their recommendations which are contained in their reports. At the instance of the recommendations of these Committees, several pieces of legislation have been introduced in the Parliament and several pieces of delegated legislations have been formulated. Even the Budget allocations of some of the Ministries were modified. Since the members of the Committees have direct contact with the members of the public, they come to feel the pulse of the people indicating as to how the Plan programmes and policies of the Government are received by them at the ground level and also the inadequacies in the system devised for delivering the benefits to the people. Thus, the Committees are better placed to bring these inadequacies to the notice of the Government and to suggest appropriate and realistic remedial measures to the Government in respect of various activities of the Government through their recommendations. In the succeeding paragraphs, we would look at a few concrete instances that have taken place in the recent past which reflect actually the impact of the recommendations of the various Committees of Parliament on various types of governmental activities and initiatives.

Impact on Legislation

At the instance of the Parliamentary Committees, several new legislative measures have been introduced in the Parliament, apart from introduction of various amendments to a number of existing legislations. A case in point is 'The Freedom of Information Bill'. The Departmentally-Related Standing Committee on Home Affairs, in its Thirty-eighth Report on the Demands for Grants (1997-98) of the Ministry of Personnel, had recommended that there should be a Union legislation on the subject—'Right to Information'. The Committee observed that the 'Right to Information Act' will promote openness and transparency in governmental functioning and a law in this direction was a long overdue measure. The Committee felt that such an Act would go a long way in firmly establishing the culture of accountability. Since the subject 'Right to Information' had not been specifically mentioned in any of the Lists under the Seventh Schedule to Constitution of India, the Committee felt that the Union Government, in exercise of its residuary powers, had the right to legislate on the subject. Accordingly, the Government initiated steps to draft a bill on the subject by appointing a Working Group on the subject. After finalising the bill, the Government introduced the draft legislation entitled 'The Freedom of Information Bill, 2000' on 25 July 2000 in the Lok Sabha. It was specifically mentioned in the Statement of Objects and Reasons attached to the Bill that this legislative measure had been taken after taking into cognisance the recommendations of the Departmentally-Related Standing Committee on Home Affairs contained in their Thirty-eighth Report. It may thus be seen that due to the persistent efforts of the Committee, free flow of information for the citizens had been ensured and a way was found to realise the objective of having a transparent, honest and efficient Government.

An instance of Government bringing in an amendment to the existing law can be seen in the assurance of the Minister of Finance in his Budget Speech delivered on 28 February 2002, wherein he has promised to make legislative changes to corporatise the Industrial Development Bank of India (IDBI) to provide it appropriate flexibility. In this connection, the Committee on Public Undertakings (2001-2002) had in its Fifth Report recommended that the status of the IDBI as a Statutory Corporation required a re-look, as the Bank functioned under the rigid provisions of the IDBI Act, 1964 and any deviation from provisions of the Act which had to be necessarily taken in response to the emerging needs of the corporate sector could not be resorted to, as all such deviations could be done only through amendments in the Act, the carrying out of which involves a time consuming, prolonged procedure. The Committee, therefore, desired that the status of the IDBI as a Statutory Corporation required a re-look and there was need to impart more operational flexibility to the IDBI to enable it to function according to the business needs to quickly respond to the fast changing needs of the financial system. The Committee, therefore, felt that the IDBI should undergo a metamorphosis so that it could function as a completely professionally board-managed company. It is evident from the announcement of the Finance Minister that this recommendation of the Committee has found its full acceptance of the Government and the national economy would be immensely benefited by this measure.

The issue relating to open ballot system for election to the Rajya Sabha had been engaging the attention of the nation, as the issue had given rise to concerns in the wake of allegations of money power made in the media in respect of the biennial elections to the Council of States held in the recent past. In this connection, the Ethics Committee of Rajya Sabha in its First Report presented to the Parliament on 8 December 1998 recommended that the issue relating to the open ballot system for elections to the Rajya Sabha should be examined and appropriate remedial measures be taken in this regard. In the light of the recommendations made by the Committee, the Government decided to bring in a Bill proposing suitable amendments to the Representation of the People Act, 1951 and introduced the Representation of the People (Amendment) Bill, 2001 in the Rajya Sabha on 5 December 2001. In the Statement of Objects and Reasons attached to the Amendment Bill, it has been clearly acknowledged that the Bill has been brought out in the light of the recommendations of the Ethics Committee.

Impact on Policies

One of the functions of the Departmentally-Related Standing Committees (DRSCs) is the examination of the long-term national policies of the Government in various spheres. The DRSCs have analysed these policies and have made several far-reaching recommendations which were carefully considered by the Government for carrying out appropriate modifications in the policies. The National Housing Policy framed by the Government in May 1992 was referred to the Departmentally-Related Standing Committee on Urban and Rural Development for detailed examination and report by the Speaker, Lok Sabha. The Committee deliberated on the policy and presented its Fourth Report to Parliament on 21 December 1993. Thereafter, the Committee also presented its Action Taken Report on the subject on 26 August 1995. A perusal of the action taken replies contained in the Nineteenth Report shows that the

Government had modified its policy in areas such as mechanism for land survey and mapping, introduction of innovative savings and lending instruments for housing finance, group-based housing activity, development of small and medium towns to reduce the growth of urban slums, empowerment of local municipal authorities, provision of fire safety in buildings, standardization of different types of constructions, modification of Technology Action Plan, etc. Even the very definition of 'housing' was modified by the Government as recommended by the Committee to include norms regarding different geo-climatic conditions and life-styles of the people in different parts of the country.

The DRSC on Petroleum and Chemicals, after its constitution, had an occasion to report on the proposed National Drug Policy which the Government had earlier laid on the Table on 12 August 1992. The Committee made several recommendations with respect to many aspects, such as industrial licensing, reservation of items for the public sector, pricing mechanism, impact of the Trade-related Intellectual Property Rights (TRIPS) as envisaged under the WTO arrangements, the Indian Patent Act and quality control. In response to a specific recommendation of the Committee, the Government decided to reserve five bulk drugs, namely, Folic Acid, Vitamin B1, Vitamin B2, Tetracyclene and Oxy-tetracyclene, for production in the public sector. In response to the recommendations of the Committee to enable the growth of indigenous industry, the Government decided that any foreign investment for equity in drug industry would be allowed only in cases of introduction of newer and more efficient technologies.

Impact on Allocations

The DRSCs have been examining the budgetary allocations every year and have been making recommendations with respect to modifications of budgetary allocations to various Ministries/Departments and to individual Plan programmes. The DRSC on Transport and Tourism has been making several observations about the inadequacy of the total Budget outlay made in favour of the Department of Tourism over the years and has been constantly recommending that the total Budget outlay should be increased. As a result of these recommendations, the Planning Commission and the Ministry of Finance enhanced the Plan allocation of the Department of Tourism substantially. The total outlay for the Department which stood at Rs. 90 crore for 1996-97 was increased to Rs. 160.50 crore for the year 1998-99. In the Thirty-first Report on the Demands for Grants (1998-99) of the Department of Tourism, the Committee expressed their happiness over the enhancement of allocations, apart from recommending further more increases in the outlay. In furtherance of this repeated recommendation of the Committee, the Finance Minister has now increased the Plan outlay for Tourism by 50 per cent to Rs. 225 crore for the year 2002-2003 and has made a specific announcement in the latest Budget speech about various other tourism promotion initiatives which are directly relatable to the Committee's recommendations.

The Standing Committee on Agriculture has been repeatedly recommending in their Reports on Demands for Grants in respect of the Ministry of Water Resources that there was a strong need to increase the allocation in favour of the Accelerated Irrigation Benefit Programme (AIBP). In its Tenth Report on the Demands for Grants (2000-01), the Committee expressed its unhappiness over the scaling down of the Budget allocations for the AIBP at the Revised Estimates stage from Rs. 1600 crore to Rs. 1400 crore by the Ministry of Finance without even consulting the Ministry of Water Resources. The Committee recommended that the allocations in this regard should be appropriately enhanced and released. In response to such repeated recommendations, the Finance Minister announced in his Budget speech on 28 February 2002 that he proposed to increase the allocation for the AIBP from Rs. 2000 crore last year to Rs. 2800 crore in 2002-03.

Impact on General Issues

The Committee on Public Undertakings has been addressing the question of substantial outstanding dues to the Central Public Undertakings from the State Electricity Boards of various States. The Committee, in their Study Tour Reports relating to the Power Grid Corporation, National Hydro Power Corporation and North Eastern Electric Power Corporation (NEEPO), observed that the Central Public Undertakings had been experiencing very serious financial crisis due to non-payment of dues by the State Electricity Boards which ran into several thousands of crores of rupees. The Committee apprehended that such huge unrealised dues would affect the financial viability and profitability and even the very existence of these Corporations. They, therefore, have been recommending to the Government that suitable measures should be taken to realise those dues. In response to these repeated observations, the Finance Minister has made an announcement in his Budget speech of 2002 about the agreement of the States to implement a one-time settlement scheme in regard to State Electricity Boards' overdues to the Central Public Sector Utilities through securitisation and issue of tax free bonds by the respective State Governments.

The Committee on Public Undertakings, in its Study Tour Report on the Semi-conductor Complex Ltd. (SCL), had expressed its concern over the attrition of experienced and trained engineering manpower from the SCL and recommended that the Government should take immediate steps for revision of pay scales of the employees of the Company so that such attrition of manpower is stopped. The Committee recommended further that the proposal for introduction of the Voluntary Retirement Scheme (VRS) submitted by the Company should be considered favourably by the Government. In pursuance of these recommendations, the Government approved the revision of pay scales and also the introduction of VRS to help better manpower management and to retain the rare talented personnel of the Company.

Apart from influencing policies and programmes, the Committees have also been able to influence the working methodologies of the Government. The DRSCs have been commenting on the delay in release of funds to different Plan programmes which had adversely affected the implementation of various programmes. The DRSC on Human Resource Development, in its Seventy-third Report pointed out that the State AIDS Prevention Organisations (SAPO) faced a number of difficulties in receiving and utilising the funds due to the system of distribution of funds obtaining at the State level which caused a lot of delay. The Committee felt that the unduly long procedural requirements delayed the timely release of funds and recommended that the funds should be released by the Finance Department of the State Governments well in advance and in any case the funds should not be released at the end of the financial year or in the last quarter of the financial year, leaving no time to absorb the funds. They also recommended that the next instalment of funds should be released to the organisation immediately on receipt of the Expenditure Certificate. As a result of these recommendations, the Government decided that the funds would be directly released to the Programme Managers without channelising them through the Finance Department of the State Governments. A perusal of the action taken reply contained in its Ninety-ninth Report of the DRSC shows that the delay which earlier occurred in the release of funds had now been completely eliminated by establishing this mechanism.

Conclusion

The instances cited above go to establish the fact that the Committees of Parliament, while securing Executive accountability, have successfully pointed out various inadequacies in the system which required suitable toning up. Keeping in view all these deficiencies, the Committees have given their considered opinion in the form of their recommendations to ensure economic, efficient and speedy execution of the policies and programmes of the Government. Although the recommendations of the Committees are only 'recommendatory' in nature and there is nothing mandatory about them, the Government has been treating them as though they were the orders of the people as they emanate from the minds of the representatives of the people. The Government has been according the highest importance and consideration to every syllable contained in the recommendations and has endeavoured to implement them in letter and spirit to realise the objective of better governance through constructive cooperation between the Executive and the Legislature. It has been our experience that the constant crusade of the Parliamentary Committees in the goal of achieving transparency, effectiveness and responsiveness from the Executive has taken the country forward on the road to progress. In all their endeavours, the Parliamentary Committees have not been looking at the Executive as an adversary, but as a partner in nation-building and as a co-player in the arduous task to achieve the laudable goals set forth in our Constitution to banish want and poverty from the country.

ROLE OF PARLIAMENTARY COMMITTEES IN STRENGTHENING ACCOUNTABILITY MECHANISMS

Vilas Muttemwar

Introduction

Parliamentary Committees perform a pivotal role in a parliamentary democracy. These Committees have been rightly recognised as a powerful instrument not only in strengthening the entire parliamentary process but also in strengthening the accountability mechanisms.

There are eighteen Standing Parliamentary Committees in the Lok Sabha. Apart from these, there are Seventeen Departmentally-Related Standing Committees of Parliament created in 1993. Further from time to time *ad hoc* Committees are also appointed for a specific purpose and they cease to exist when they accomplish the task assigned to them and submit the report. These important Committees help both the Houses of Parliament by making strenuous and deep studies to enable them to effectively play the respective roles assigned to them by Parliament, and in the process help in strengthening accountability mechanisms.

Ensuring Executive Accountability to Parliament

In a parliamentary system, Executive accountability to the Parliament and the latter's right to oversee and scrutinise the way in which the Executive functions are accepted as axiomatic. However, in actual practice, due to various factors such as the pressure on parliamentary time, the size of the House, its operational procedures, etc., it is difficult, if not impossible, for the Parliament as a body to undertake thorough scrutiny of the varied and complex details of a modern administration and its financial transactions. Experience has shown that the solution to this problem lies in the development of an integrated system of Committees of Parliament with adequate powers to scrutinise the working of the Government on a continuing basis.

Working of Financial Committees

Among the Standing Committees of the Lok Sabha, the three Financial Committees—the Committee on Public Accounts, the Estimates Committee and the Public Undertakings Committee—keep a close watch over

Government spending and performance. They have been rightly recognised as the watchdog Committees. The excellent work being done by these Committees may be concisely summed up in the words of Shri G.V. Mavalankar, the Speaker of the First Lok Sabha: "a system of financial control very properly devised and very carefully worked is, to my mind, the *sine qua non* of good administration.".

The Parliament grants hundreds of crores of rupees each year for expenditure by various Departments of the Government, and makes specific appropriations under different heads. There must be some check on the dispensations of public funds by the Ministries to see whether the restraints placed by Parliament have been kept in view or any transgressions have been made, whether the money has been honestly and wisely expended for the specific purpose for which it was granted, and whether that has been done prudently, frugally and intelligently. The Parliament cannot be expected to exercise this check all by itself. This work is carried out by the Public Accounts Committee which labours as a watch dog on behalf of the Parliament. The Public Accounts Committee, by its close scrutiny of accounts, has earned a reputation for impartiality, firmness and grasp for details. The good work done by the Committee has helped greatly in improving financial control by the administration and assisted in the detection of many irregularities and even "dishonesties". The findings of the Committee have led to more than one judicial inquiry. The work of the Public Accounts Committee is of immense benefit to the members; it enables them to get a clear idea of the working of the administration and equips them to participate effectively in the working of the House. Thus, the Committee has been rightly recognised as an unshakeable pillar of parliamentary democracy that oversees the accountability of administration to Parliament.

The consciousness of the administration that there is a body which will scrutinise what has been done acts as a great deterrent against any tendency towards slackness, negligence or arbitrariness on the part of the Executive while incurring expenditure from the public funds. By its constant vigil, the Committee has introduced financial discipline not only in expenditure but also in revenue.

Another pivot of riveting and strengthening administrative accountability to Parliament is the Estimates Committee. The functions of this Committee are: (i) to report what economies, improvements in organisations, efficiency or administrative reform consistent with the policy underlying the estimates may be effected; (ii) to suggest alternative policies in order to bring about efficiency and economy in administration; (iii) to examine whether the money is well laid out within the limits of the policy implied in the estimates; and (iv) to suggest the form in which the estimates shall be presented to Parliament. The constructive and positive work done by this Committee in effecting efficiency and economy has gone a long way in strengthening the accountability mechanism.

Yet another important Committee which plays an equally significant role is the Committee on Public Undertakings. A very large sum of public money has been invested in establishing the Public Undertakings. In the course of the past five decades, the public sector in India has assumed large dimensions involving in the Central sector an investment of over Rs. 2,30,000 crore, an amount equivalent of about 18 per cent of the country's GDP. It has taken a dominant position in some vital economic and industrial areas, especially basic infrastructural sectors such as power, mining and telecommunications. The Committee on Public Undertakings keeps a close watch over the way the Public Undertakings function.

Standing Committees

Several Standing Committees of Parliament act as Committees to inquire and scrutinize Executive accountability. The Petitions Committee of Parliament is a powerful forum to redress the grievances of the public against irregular and repressive actions of the Government, if any, which in its own way enforces accountability. Further, the Committee on Government Assurances is ever vigilant to ensure the fulfilment of the assurances given by Ministers on the floor of the House.

The Committee on the Welfare of Scheduled Castes and Scheduled Tribes considers matters relating to the welfare of the Scheduled Castes and Scheduled Tribes in tune with the provisions of the Constitution. Likewise, the Committee on Subordinate Legislation ensures that necessary rules are adequately framed in consonance with the parent Act.

Departmentally-Related Standing Committees

With a view to consolidating and enlarging the scope of the accountability mechanism, there was for quite a long time a demand for the creation of Subject Committees to supplement the work of Parliament. Appreciating the need for such Committees, seventeen Departmentally Related Standing Committees covering under their jurisdiction all the Ministries/Departments of the Government of India were created in 1993. With the creation of the Departmentally-Related Standing Committees, the Demands for Grants of all the Ministries/Departments are now required to be considered threadbare by these Committees. Earlier, the Demands for Grants of hardly three or four important Ministries used to be discussed in detail by the House and due to paucity of time to complete the budgetary process in time, it was not possible for the House to consider all the other Demands which were guillotined at the end. This major deficiency has now been overcome and as soon as the general discussion on the Budget is over, the House is adjourned for a fixed period. During this interregnum, the Demands for Grants of all the Ministries/Departments are considered in detail by these Committees. Each Committee, after consideration of the Demands for Grants, submits its report to the House highlighting and emphasising the important aspects of the Demands requiring rectification for the benefit of the House. The reports of these Committees have gone a long way in improving the accountability mechanism. It is only after the reports of all the Standing Committees are presented to the House that the discussion and voting on Demands for Grants take place.

The Standing Committees also examine and report on important aspects of the working of various Ministries/Departments under their respective spheres. The perpetual vigilance by these Committees over the working of the Ministries makes the accountability mechanism all the more effective.

PARTNERSHIP APPROACH IN THE COMMITTEE SYSTEM—RESPONSIVE AND PERFORMING GOVERNANCE

B.B. Ramaiah

Introduction

The world is undergoing unprecedented changes in many respects. These changes have been taking place in the state policy of India as well and reaping rich dividends. At the same time, these changes as well as their results are also creating new ambitions and expectations from the people. These expectations create added responsibilities on the parliamentarians and it is imperative for us to rise to the occasion and meet the expectations of our constituents. It is in this context, an attempt is being made here to share and disseminate my experiences as a people's representative for five terms as well as having led Parliamentary Committees with different mandates.

My experience is that Committee System in a parliamentary democracy is more relevant now than at any time in the past. I also believe that in future, the Committee System will not confine itself to mere deliberative and legislative process but shall enlarge itself to forging a partnership between the law and policy-makers represented by the parliamentarians, and their executors as represented by the Executive. In this paper, I shall try to illustrate by sharing my experiences in this regard and how such reinforcement of the Committee System could result in a responsive and performing governance.

Background

As we all are aware, the Constitution of India was adopted in the year 1949 and its Part IV was dedicated to the Mission Statement of Governance by our Constitution framers which is popularly known as the Directive Principles of State Policy. In this statement, the national goals were set forth for governance and defined as self-reliance and social justice[1]. At the extant time, the Parliament was mostly confined to deliberation, discussion and legislative functions with a provision that as far as control over public finances were concerned, it was the prerogative of the

Lok Sabha. A Committee System functions in the Parliament and important among the Committees were the three Financial Committees—the Public Accounts Committee, Estimates Committee and Committee on Public Undertakings. The Presiding Officers were also vested with the power to constitute other Committees. However, till 1991, it was invoked mostly for its auxiliary functions like the Committees on Government Assurances, Subordinate Legislation, Papers Laid or constitution of Select Committees for examination of bills which were mandated for legislation or to investigate matters of public concern.

However, the Tenth Lok Sabha saw the introduction of two innovative instruments in recognition of the need to involve parliamentarians in the planning process as well as to facilitate a higher degree of participation from the parliamentarians. The first was the expansion of the Committee System by setting up seventeen Departmentally-Related Standing Committees wherein the potential of its members in different skills and competencies was sought to be put to more qualitative use. This also provided the members an opportunity to not only deliberate on the programmes and policies being executed by the different Ministries and Departments but also to make valuable and constructive suggestions in improving the performance. The second was the introduction of the Member of Parliament Local Area Development Scheme which entitled the members of Parliament to recommend works in their constituencies and also enabled them to close those gaps which had somehow been missed out in the planning process. Thus, we entered a stage of a responsive and performing governance. The subject-based Committee System in the Parliament went through all the stages of group dynamics, namely, forming, storming and norming before it reached the current level of performing. The Member of Parliament Local Area Development Scheme also went through similar phases. The MPLAD Scheme, till 1999, did not have a very flattering level of success as there were huge unspent balances and lot of procedural infirmities which became a part of the CAG's reports, the cumulative effect of which was a bad Press and a bad perception about the very Scheme itself. It was at this stage that the then Speaker late Shri G.M.C. Balayogi, envisioned the need to introduce the Committee System into this Scheme as he felt that it had a direct bearing on the parliamentarians' image and hence the very image of Parliament was at stake. Accordingly, the Committee on Member of Parliament Local Area Development Scheme was constituted on 22 February 1999 and I was given an opportunity to chair the Committee.

The Committee, after some deliberations, observed that this Scheme was an extremely vital instrument in meeting the people-centered developmental needs as well as in meeting vital, small-scale infrastructure needs like culverts, school classrooms, libraries, etc. However, the Scheme was impeded by communication and perspective gaps between the people's representatives who were responsible for identifying the needs and suggesting the projects, the District Officers of the State Government who were responsible for execution of the projects and the Central Government Officers responsible for release of the funds and monitoring the Scheme's progress and effectiveness.

The result of the diagnostic exercise was communicated to the Speaker, Shri Balayogi who came up with a remedial measure forthwith. He suggested that the Committee System for this scheme should enlarge itself from its present deliberative mechanism to a participative and partnership mechanism. In pursuance of this idea conceived by the Honourable Speaker, the Committee held two interactive sessions at Hyderabad on 15 April 2000 and at Khajuraho on 12 September 2000 for Southern and Central Region States, respectively. During these interactive sessions, a representative section of District Officers, the members of the Committee on MPLADS and the officers of the Ministry of Programme Implementation of the Government of India freely interacted, and the results were extraordinary. Several factors impeding the MPLAD Scheme were resolved and the results are there for all to see. During the two years since the constitution of the Committee, releases to the tune of more than Rs. 3500 crore have been made in respect of the Scheme and most of the communication and perspective gaps impeding the implementation of this Scheme have been resolved in respect of the States of these two regions. Similar, interactive exercises are yet to be held for the States of the other regions of the country.

In this context, I would also like to share my experience of this partnership approach that was again put to practice in the Sub-Committee on Public Enterprises and Heavy Industry of the Department of Public Enterprises. I had the opportunity of being the Convener of this Sub-Committee and by virtue of my fruitful experience of the partnership approach in the MPLADS Committee, an attempt was made to replicate the same in this Sub-Committee. The Sub-Committee had undertaken a performance review of several Public Sector Undertakings (PSUs) which at the time of their establishment were envisioned as suppliers of critical equipment to strategic sectors like petroleum and oil, defence services, construction and infrastructure, telecommunication, etc. But, over a period, these Public Sector Units had accumulated huge losses due to the lack of orders, poor performance, sub-optimal levels of operation, etc. and were on the verge of closure. Many Public Sector Units had fallen on the Board for Industrial and Financial Reconstruction (BIFR) ambit and some others were in line. The Sub-Committee observed that some of the problems faced by these PSUs could be resolved through the partnership approach between the client-server meetings. The Sub-Committee convened meetings for PSUs in the telecom, petroleum and engineering sectors which enjoyed a client-server relationship, and the results of these meetings had been overwhelming. As a result, many differences relating to contentious issues like bad deliveries, liquidated damages, etc., could be resolved and a new approach to cooperate effectively in concurrent engineering to ensure better supplies and designs to delivery mechanisms was undertaken. In this context, a large exploratory session of PSUs and Departmental Undertakings facilitated by the Sub-Committee was held on 14 October 2001. The outcome of the session stretched the cooperative endeavour to entering into joint ventures that would complement the strengths of these Undertakings and give them the cutting edge in the era of global competition.

Hence, it is my earnest belief that the Committee System with a partnership approach rather than a deliberative one could be an effective tool for responsive governance and a facilitator for performing organizations. However, it would also be imperative to identify the constraints and threats which may confront this mechanism.

Constraints and Limitations

The adoption of partnership approach in the Committee System is also fraught with many limitations and constraints. But none of them is insurmountable. At the outset, I would like to begin with process constraints, which may hinder the Committee System from being an effective tool. An American sociologist Robert Merton[2] developed a series of inter-relationships between the goals and the means to attain the goals. Merton propounded that in the working of the system, a situation may arise in which the goals are lost and only means are adhered to and the resultant scenario will be ritualism. It is my fear that if we participants in the system are not alert, the Committee System also may turn into mere ritualism. In overcoming this constraint, I have full faith in the commitment of my parliamentary colleagues that they would endeavour to rise to the occasion whenever any Committee tends to move to the brink of ritualism. This constraint could also be overcome with continuous human resources development of both the members of the Committee and the Parliament Secretariat. We have the Bureau of Parliamentary Studies and Training and other institutional mechanisms to meet this need. In addition, sound-monitoring mechanisms could also enable us to overcome this constraint.

The second major limitation which may impede the fostering of the partnership approach to the Committee System is that our Constitution and the federal nature of the polity lay emphasis on the theory of separation of powers between the Legislature, the Executive and the Judiciary for the Union Government and the State Governments. This is a limitation that could be overcome with a harmonious approach. The Committees do not want to usurp the jurisdiction of the Executive or the Judiciary, or any State subject but only seek to facilitate the governing process to a more responsive and performing one. Such an approach, known as the Doctrine of Harmonious Construction has been taken by the Honourable Supreme Court in the *RMD Chamberwale v. State of Bombay*[3] way back in 1958, which has been reinforced later in many other cases. Moreover, it is imperative for the Committee to initiate a positive and facilitative role in policy formulation, execution and legal iteration which culminates in performing and responsive governance, notwithstanding in whose jurisdiction the subject-matter may fall.

The third major limitation or constraint is the question of jurisdiction. In an endeavour to adhere to the partnership approach, the Committee may at times have to go beyond its jurisdiction both in terms of initiating the subject-matter and in transgressing into the jurisdiction of another Committee. As regards initiating the subject, the member's right to initiate discussion on any issue is guaranteed to Parliament under the internal autonomy doctrine under article 122(1) which extends to the Committees also[4]. In this context, the adage, "the proof of the pudding is in the eating" has been testified by a recent case study. During the course of the performance review of the Hindustan Paper Corporation Limited by the Sub-Committee on Heavy Industry and Public Enterprises, it was observed that the performance of the Corporation whose units were located in the North-Eastern region, required the Sub-Committee to address holistically the issue of economic development of the North-Eastern Region. The Sub-Committee facilitated an interactive session in which the Minister of North-Eastern Development, along with his officers as well as officers of the Ministries of Finance, Environment and Forests, Railways, Petroleum, Railway Board, etc. participated. The session enabled identifying a strategic road map to the resolution of several problems of the North-Eastern Region which is another success story of this partnership approach in the Committee System.

Summary and Conclusions

To sum up, I earnestly hold the view that the Committee System is an excellent tool in governance being a performing and responsive one if it embraces a partnership approach. It enables synergy between policy and law-makers and law enforcers or the executives and such a synergy is vital for effective and success oriented governance, especially in view of the challenges we may face in the 21st century. As we all note with success, there is integration and convergence of several distinctive factors which, hitherto, were treated as mutually exclusive. In the communication sector, for example, the convergence and concomitant synergy between IT and Communication Media is already on the anvil which has benefited the nation as a whole. Similarly, a convergence in the functioning of the three arms of the Government can bestow greater synergetic benefits and make governance more effective. But the initiative for this has to come from the parliamentarians as far as the Indian context is concerned as it is the Parliament which is called "Sovereign within its powers"[5]. In this initiative, the Committee System could be the most appropriate instrument through which this convergence and partnership approach could be envisaged. The fact, however, remains that utmost care be taken to ensure that there is no transgression of jurisdictions while adopting this approach. My firm belief is that it is extremely imperative for the Parliamentary Committees to make a contribution for the establishment of a New Social Order in this country.

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1. Mani, Ramaswamy V.S., 1994, University of Manchester, Manchester, U.K., p.20
2. Merton, Robert King, *Social Theory and Social Structure,* Collier Miller, New York, 1965, p.49
3. AIR 1958 *SC* 699
4. Jain, M.P., *Indian Constitutional Law,* N.M. Tripathi Pvt. Ltd., Bombay, 1987, p.60
5. *Ibid.,* p.75

COMMITTEE SYSTEM— NEED FOR STREAMLINING PROCEDURES

P. Upendra

Introduction

The Indian Parliament has been experimenting, for the last nine years, with the Departmentally-Related Standing Committees (DRSCs) for various Ministries and Departments of the Government of India. There are, altogether, seventeen such Committees, each with a maximum membership of forty-five (30 members from the Lok Sabha and 15 members from the Rajya Sabha), reflecting the strength of various parties in the two Houses. Eleven of these Committees are headed by senior members of the Lok Sabha and six by members of the Rajya Sabha.

Though the proposal for the introduction of the Committee System, following the example in various other countries, was under consideration for several years, it did not fructify till March 1993. While the members feel that these Committees should ultimately be fashioned on the lines of the American Committee System, wielding enormous powers, it is to be admitted that there are many grey areas at the moment and the powers and functions of the Committees have not been clearly delineated or established. Obviously, it was considered prudent to make a beginning and allow the Committees to evolve themselves in course of time on the basis of the experience gained. However, it is time for an in-depth analysis of the working of these Committees and streamlining procedures.

Accountability of the Executive

While, on the one hand, Parliament lays down policies through various statutes, resolutions, etc., on the other, it has to ensure that the Executive acts in conformity with those policies and utilises the powers conferred on it—and notably the budgetary credits—for the purposes for which they are intended. Through various checks and balances and through well-established practices and channels, Parliament attempts to exercise supervision over the Executive actions. The Committee System is one such device used by the Parliament for ensuring accountability of the Executive to the Legislature, and through the Legislature to the people of the country.

The Administrative Reforms Commission, while commenting on the credibility and functions of the Parliamentary Committees, said: "The Parliamentary Committees, specially the Financial Committees of the Parliament, have wielded great influence over the working of the administration, so far as the financial control is concerned. They have acted as a moral check, due to the awareness that the activities of each and every Department would come under the searching examination of the Committees and the accountability to Parliament—in respect both of the criticism levelled by the Committees and of the recommendations accepted—has helped to keep the administration on its toes".

Origin of Committees

From the beginning of the parliamentary system of Government in this country, administrative accountability to the Legislature, through Committees, became the *sine qua non* of the system. Even in the Central Legislative Assembly, there were Committees, though they lacked powers. Subsequently, various Committees came into being—Consultative Committees attached to various Ministries; Financial Committees, like the Public Accounts Committee, the Estimates Committee and the Committee on Public Undertakings; the Railway Convention Committee; the Committee on the Welfare of Scheduled Castes and Scheduled Tribes; and nearly a score of so-called House Committees. Besides, there have been *ad hoc* Committees like the Joint Parliamentary Committees to probe into certain happenings and the Joint Select Committees on Bills.

The Indian Parliament possesses an organized system of Committees. Our Constitution does not make any specific provisions in regard to Parliamentary Committees, but they are mentioned in several articles. Article 88 enshrines the right of Ministers and the Attorney General to speak in any Committee of Parliament. Article 105 provides that no court proceedings can be initiated against a member for anything said or any vote cast in a Committee of Parliament. Appointment, terms of office, functions and main rules of procedure for conducting business of the Committees are regulated under the provisions of the *Rules of Procedure and Conduct of Business* and *Directions by the Speaker.* There are three sets of rules relating to Parliamentary Committees. While general rules are applicable to all the Committees, specific rules make special provisions for particular Committees, and internal rules regulate the internal procedure of each Parliamentary Committee and are made by Committees themselves with the approval of the Speaker.

All along, there have been two types of Parliamentary Committees in India: (i) Standing Committees and (ii) *Ad hoc* Committees. In August 1989, the Parliament constituted three Subject Committees relating to Agriculture, Science and Technology and Environment and Forests. These Committees were also incorporated in the *Rules of Procedure and Conduct of Business in Lok Sabha.*

The functioning of these three Subject Committees for over three years proved their utility as viable instruments to ensure proper legislative scrutiny over the activities of various Departments of the Government. There was general consensus among all concerned that the Parliament should go in for a full-fledged Committee System. The then Speaker, Lok Sabha, Shri Shivraj V. Patil, took the initiative and discussions were held with the Prime Minister, leaders of parties, members and others. Thereafter, the agreed proposals were placed before the Rules Committee of the Lok Sabha. The Rules Committee, in its third report presented to the Lok Sabha on 29 March 1993, recommended the setting up of seventeen Departmentally-Related Standing Committees of the Parliament. The Rules Committee of the Rajya Sabha also adopted the same rules which were presented to the Rajya Sabha on 29 March 1993. Both the Houses adopted the rules on the same day. In this way, seventeen Departmentally-Related Standing Committees were constituted in March 1993.

Advantages of the Standing Committee System

Several advantages have accrued from the Standing Committee System. One reason which prompted the formation of such Committees here, as well as in other countries, is the inability of the legislative bodies to devote enough time for discussion on important legislative measures, Budget grants and policy papers. The character of debates, for example, in Indian Parliament, has been changing fast during the last few years. Gone are the days when very suave, sober and well-reasoned discussions and speeches were made on bills and policy statements. Now, Parliament and the State Legislatures reflect the mood of the nation and have become the fora for ventilating public grievances. Most of the time of the Parliament is taken by members raising issues of topical interest and current problems and, in the process, momentous legislations are being passed, sometimes even without a quorum. Budget demands of only a few Ministries are discussed and the rest are guillotined. The Standing Committee System facilitates members belonging to various parties to have an in-depth discussion on the Budget demands, the Annual Reports of the Ministries concerned, the plans of the Ministries and policy documents and the bills referred to them. As members are allowed to opt for the membership of the Committees of their choice, obviously those who are interested, or have specialisation in a particular field, are included in these Committees and more knowledgeable discussions are, therefore, possible.

The second advantage of the Committee System is the non-partisan approach adopted by members in the Committees, unlike in the open House. During discussions in the House, members normally take a partisan line, depending on their party affiliations, and are wary of speaking out their minds lest they should be misunderstood by their own party or their speeches are taken advantage of by the other side. A recent classic example of this type of non-partisan approach of members in a Parliamentary Committee was the unanimous report of the Joint Parliamentary Committee 1992-1993 on the Securities Scam. All the reports of the Standing Committees are, likewise, adopted on the basis of consensus and are generally critical of the performance of the Ministries.

DRSCs at Work : An Appraisal

The experience of the Committee System during the last nine years has shown that members have taken their work very seriously and with a professional touch, which we often do not find in the House debates. They come well-prepared for the Committee meetings and offer valuable suggestions. Attendance, though not full, is satisfactory. While one-tenth of members constitutes the quorum in the House, it is one-third in the Committees, which, in my view, is rather high. There have been reports in the Press about the unsatisfactory attendance of members in the Committee meetings. It is the general practice that most of the members go to their States and constituencies once Parliament is adjourned; they do so even for the week-ends. I feel that the three-weeks gap after the presentation of the Budget could be avoided and Parliament should continue to sit without a break. The pre-lunch Session could be used for Question Hour, Zero Hour, Special Mentions and minor legislative work, and the afternoons could be left free for the Committee meetings.

There were apprehensions, at the beginning of the Committee System, about the attitude of the bureaucracy towards the Committees and the extent of cooperation expected from them. It was feared that officials might not like to come on the direct firing line of the Committees, though they had been appearing before various Parliamentary Committees earlier as witnesses. But our experience in the Committees shows that bureaucracy has welcomed these Committees, because previously they had no opportunity to enlighten and inform the members of the general functioning of their Ministries and Departments and most of the time they had to act through their Ministers. But, now, they have a direct access to the members to whom they can explain their problems, difficulties and shortcomings.

A doubt has been expressed about the response of the Government and the sanctity of the Committees' recommendations. Most of the Committees are taking great pains to analyse the Budget demands and are suggesting revised allocations under various heads. When these reports are placed before the Parliament, following its resumption after the recess, there is not enough time for the Ministries to consider these suggestions and alter the allocations. If this is not possible, why should the Committees go so minutely and hurriedly into the demands and make suggestions? This is a grey area yet to be tackled.

Follow-up Action

Another doubt is in regard to the follow-up action on the reports submitted by the Committees. The rules regarding the Standing Committees say that the *reports of the Standing Committees have persuasive value and shall be treated as considered advice given by the Committees.* This should be deleted and recommendations of the Committees should be made mandatory. The seventeen Standing Committees submit three to four reports per year on an average. The question arises as to what happens to all these recommendations? As per rules, the Ministries and Departments have to submit Action Taken Reports to the Committees within a specified period. In many cases, these Action Taken Reports are in the form of expression of inability on the part of the Ministries to act upon the recommendations and, in some cases, outright rejection. In such cases, what can the Committees do and what should be the attitude of the Parliament when unanimous recommendations made by its Committees are either rejected outright or are not implemented? One suggestion is that there should be a "Committee on Committees," with the Speaker as the head and all Chairmen as members, to act as a watch-dog to see what is happening to the various recommendations of the Committees and submit periodic reports to the Parliament as to how many recommendations have been made by the Committees and what action has been taken by the Government. There should be a discussion in both the Houses of Parliament on these review reports. Sometime back, the Lok Sabha and Rajya Sabha Secretariats had brought out compendia on the recommendations of the Committees and the action taken by the Government. These should be periodically revised.

Suggestions for Future

Before the Budget formulation, the Finance Minister consults various interests. Rough indications of the likely allocations are given to the

Ministries for formulating their own Budgets. There are open discussions at this stage in various Ministries. The Budgets of the Ministries are forwarded to the Finance Ministry several weeks before the Union Budget is presented. It may be considered whether it would be worthwhile if the Standing Committees are taken into confidence once the Ministries decide upon their Budget allocations so that useful suggestions might emerge to enable the Ministries to make necessary changes. There is no secrecy about the allocations made under various heads, the secrecy part being confined only to new tax proposals of the Finance Minister. If this is not acceptable to the Ministries, Committee recommendations of the previous year must be taken into consideration when the Ministries finalise their allocations.

Similarly, Annual Reports of the Ministries and Departments are finalised several weeks earlier and sent for printing and circulation along with the Budget documents. Here also, there is no secrecy element involved. As soon as the Ministry finalises its Annual Report, typed and photostat copies of the same may be made available to members of the Standing Committee so that they may have enough time to equip themselves with the latest information regarding the Ministry before they discuss Demands soon after the Budget presentation.

Draft bills and policy documents are now considered by the Committees only when these are referred to them by the Presiding Officers of Parliament. But, routing of all policy documents and bills through these Committees should be made compulsory and they should come before Parliament only after the Committees have considered them and made their recommendations.

While citizens' access to these Committees and throwing open the Committees' proceedings to the media are matters yet to be settled, the Standing Committees and their Sub-Committees have started inviting experts and interested citizens to depose before them as witnesses.

There is provision in the new system for the Committees to be assisted by experts on the given subjects. This is necessary as it would provide the much needed information management and interpretation of data for members of the Committees. The services of these experts should be utilized more frequently to give a professional touch to the discussions and reports of the Standing Committees.

Plethora of Committees

The time has now come for a decision on the continuance or otherwise of a number of existing Committees. In the Indian Parliament, we have already twenty-nine Consultative Committees, about eighteen Financial and House Committees, and another seventeen Departmentally-Related Standing Committees. It has been observed that there is a lot of strain on the Secretariats of the Lok Sabha and the Rajya Sabha in dealing with this plethora of Committees.

Though the Standing Committees have been precluded under the rules from making study tours outside Delhi, all the Committees invariably go on tours, stretching the arrangements for hospitality available with the State Governments and the Public Undertakings. There is, therefore, a need for curtailing the number of Parliamentary Committees. The continued relevance of Consultative Committees and the Estimates Committee, particularly, needs to be examined.

The rules provide for the formation of Sub-Committees or Study Groups of the Standing Committees and all the Committees have already done so. But formation of any formal Sub-Committee or Study Group would require all the paraphernalia of a full Committee, including maintenance of verbatim record, translation facilities, appearance of witnesses, tour arrangements, etc. If seventeen Standing Committees appoint four to five Sub-Committees or Study Groups, we can well imagine the confusion and workload it would entail. It is, therefore, necessary that only informal Study Groups are appointed by the Standing Committees to make a study of a particular problem or institution and report back to the main Committee. Tours by Sub-Committees or Study Groups should be made exceptional. The Secretariats of the two Houses should also be strengthened to cope with the additional workload. It is heartening to note that some action already has been initiated by the Rajya Sabha and Lok Sabha Secretariats in this regard.

We have made a good beginning in the country in regard to the Committee System and it is hoped that with the experience gained, we will be able to strengthen it further so as to make it a vital organ of our parliamentary processes and ensure greater accountability of the Executive to the Legislature and to the people of the country.

STANDING AND CONSULTATIVE COMMITTEES OF PARLIAMENT

Raja Ramanna

Departmentally-Related Standing Committees

One of the very useful innovations in parliamentary practices in recent years has been the formation of the Departmentally-Related Standing Committees (DRSCs). In Parliament, it is difficult to conduct discussions on subjects which require a certain degree of expertise. Besides, very often, discussions on various subjects are curtailed because of constraints of time. That being so, the setting up of the DRSCs in 1993 has been a very welcome step. In these Standing Committees, a certain degree of selectivity of participants is available as the Chairman/Speaker nominates them usually on a party basis, but at times also on a voluntary basis. Above all, the discussions in the DRSCs are made effective by inviting specialists and non-members of Parliament to assist in the discussions.

For instance, in the case of the DRSC on Defence, defence personnel are often called to seek clarifications on matters relating to strategy and ordnance. The same is the case with matters concerning defence science. It sometimes happens that in the whole House, members toe the party line on subjects which, in principle, should have wide applications, and the discussions become very biased. In the Standing Committees, most people divest themselves of their party affiliations and take a position which benefits the nation as a whole. Taking into account the views of all concerned, the deliberations of the Standing Committees are noted down by the Secretary of the Committee and minutes thereof are prepared. Discussions and recommendations of the Committees are finally laid on the floor of the House through the Committee reports for implementation, wherever necessary. In this process, specific problems, and the views of many members who are aware of the various dimensions of such problems, are made available to the Government.

Consultative Committees

The Consultative Committees of Parliament have been in place for long. One would have thought that as the name suggests, these Committees were set up so that the Government could consult select members on specific subjects and issues. Before the formation of the Subject based Standing Committees, any question could be raised in the Consultative Committees and not exclusively those which require their consultation. In the past, the value of the deliberations to the Government had become diffused, as members were using it for making statements on policies, rather than for consultation on specific matters of validity for the implementation of a specific policy. Now with the constitution of DRSCs, it is time that the Consultative Committees are used for getting a broader view on subjects of importance such as on bills, on issues like education, health, etc.

Discipline and Decorum

In recent times, the Houses of Parliament have been used by parties to force issues by coercing members to raise issues outside the purview of the rules and at times through unparliamentary methods. In fact, both Houses were adjourned on 13 December, 2001, the day the terrorists attacked Parliament because of continued interruptions. In the wake of the attack on Parliament, the Government is now fully aware of the security needs in the Houses of Parliament and a new spirit of camaraderie has come into existence.

The televising of the proceedings of the Parliament enables the people to see for themselves how the country is being run as a democracy. Parliamentary activities are also being widely covered by various television channels. The use of this modern technology gives the public the advantage of judging the nature of the proceedings. It is, thus, essential that members of Parliament appreciate this publicity that is now available to them so that the respect for the parliamentary proceedings is not hindered in any way.

PAC—STRENGTHENING PARLIAMENTARY FINANCIAL CONTROL

B.P. Mathur

Introduction

Parliament's control over national finance acts as a key instrument in enforcing accountability of the Executive to the Legislature, a basic ingredient of a democratic polity. Parliament's gradual control over national finance is linked with the development of democracy in Great Britain and France. In France, the struggle between monarchy and nobility over the control of tax revenues was one of the causes of the Revolution of 1789 with the cry, "no taxation without representation". In Britain, "it was through their control of the nation's purse-string that the Commons became the guardian of human rights. Control over finance enabled Parliament to secure the safety of the life, liberties and the rights of the subject against arbitrary acts by the Executive," observes Paul Einzig[1], a distinguished student of the subject. It took several centuries of struggle by British Parliament dating back to the Magna Carta in 1215, to assert its right to control the public purse. The Bill of Rights of 1688 had established the House of Commons' rights to taxation and the particular purpose for which money is to be spent. But, for a long time, the House of Commons remained under the illusion that it could control expenditure by putting a check on the issue of money from the exchequer, instead of ascertaining how the money was spent. It was due to the missionary zeal of Gladstone, who was Finance Minister at that time and later the Prime Minister, that the Exchequer and Audit Department Act was enacted in 1866, which "converted the nominal control by Parliament into real control."[2] A Public Accounts Committee was constituted for the first time in April 1861, but it became effective only when the services of a full time expert—the Comptroller and Auditor General and its staff of professional auditors—was placed at its disposal. One of the greatest achievements of the Act was that it compelled all Departments to submit to Parliament audited accounts showing whether the moneys issued by the exchequer were actually spent in accordance with Parliament appropriations. The new arrangement solved the dilemma which baffled Parliament for many years whether expenditure should be controlled by inexpert parliamentarians or by expert non-parliamentarians.

Evolution of PAC in India

In India, Public Accounts Committee was constituted both at the Centre and the Provinces in 1921 under the provision of the Government of India Act of 1919 as a result of the Montague-Chelmsford Reforms. The Chairman of the PAC was the Finance Member of the Governor General's Council; the maximum strength of the PAC was twelve and not less than two-thirds of its members were elected by the non-official members of the Assembly. During the twenty-five years of its existence upto the time we attained Independence, the Committee came to be a major force in legislative control of the expenditure and exercised increasing influence on the actions of the Government despite limitation of its constitution and restriction on its authority. The Committee continued to function under the old arrangement even after 1947, with the Finance Minister functioning as its Chairman. After the Indian Constitution came into effect on 26 January 1950, the Committee acquired its rightful place as a full-fledged Parliamentary Committee under the control of the Speaker with one of its members elected as its Chairman. The Committee was then constituted under Rule 308 of the *Rules of Procedure and Conduct of Business in Lok Sabha*. Since 1954-55, the PAC consists of 22 members, fifteen members from the Lok Sabha who are elected by the House every year from amongst its members according to the principle of proportional representation by means of single transferable vote and seven members of the Rajya Sabha. In 1967, a convention was set to appoint a member of the Opposition party as Chairman of the Committee and Shri M.R. Masani was the first Opposition member to adorn this office. Paying tribute to the new arrangement, the Speaker, Dr. Sanjiva Reddy observed: "Shri Masani has more than vindicated his faith with his intellectual calibre, broad sweep, sense of dedication and restraint and has lent a new stature to the Committee, earning for it the respect and approbation of all those who appeared before it, and was able to carry his colleagues in the Committee who were given a full sense of participation in Committee's work."[3] This healthy convention of appointing a member of the Opposition as Chairman has since been continuing.

Functioning of the Committee

Due to the meticulous and thorough examination of Audit Reports taken by the Committee, it has come to acquire a great deal of prestige and authority. The Committee's reports are marked by a high degree of objectivity as it invariably works on non-party lines free from the passions of debates in the House. Some of the Committee's reports have led to major changes in Government policy. In its Third Report of the First Lok Sabha on Exchequer Control on Public Expenditure, the Committee recommended separation of Audit from Accounts, which was subsequently endorsed by the Administrative Reforms Commission (1968) and implemented by the Government in 1976. In its Eleventh and Fiftieth Reports (Fourth Lok Sabha), the Committee laid down guidelines for items of expenditure which would constitute New Service/New Instrument of Service under article 115 of the Constitution. The Committee's Reports on Income Tax and Central Excise issues such as Refund of Central Excise duty, Advance Licensing Scheme, and certain exemptions allowed under Wealth Tax have led to changes in taxation law to protect Government's revenue. In its Report on Disinvestment of Pubic Enterprises' shares, in April 1994 (Seventy-fifth Report of Tenth Lok Sabha), the Committee felt that there was lack of transparency in the manner in which the exercise was undertaken and desired the Government to fix the responsibility on the officials concerned which led to the Government setting up an Enquiry Committee. The out of turn allotment of housing accommodation by the Minister for Housing was another subject of PAC's probe (1995-96) and the Committee's recommendations coupled with the Supreme Court's directive in a PIL led to stoppage of the malpractice and formed the basis for adopting a more rational policy in this regard. Several other Reports of the Committee have also received a great deal of attention.

The effectiveness of the Committee can be judged by the response of the Government to its recommendations. The following data for the twenty-year period from 1980 to 1999 which covers the Seventh Lok Sabha to the Twelfth Lok Sabha will give an idea.[4] The PAC gave 6112 recommendations out of which the Government accepted 3709 recommendations—thus the percentage of recommendations accepted was 61. Subsequently, about 10 per cent recommendations were dropped at the Action Taken Stage on receipt of Government's replies. Another 10 per cent were reiterated by PAC out of which some were accepted by the Government. Thus, it can be said that about three-fourth of the recommendations were accepted. However, numbers may not give a correct picture. Sometimes, Government does not accept some of the major recommendations of the Committee. For example, PAC has been advising the Government for a long time to put a statutory limit on public borrowing under article 292 of the Constitution but Government had been ignoring the recommendation; it was only in December 2000 that the Fiscal Responsibility Bill has been introduced in Lok Sabha to regulate borrowing.

Examination of Audit Reports

One of the main functions of the Committee is to examine the Audit Report of the Comptroller & Auditor-General. During the First, Second and Third Lok Sabha, the PAC examined almost all the paras in the CAG's audit reports and made its recommendations. However, during the tenure of the Fourth Lok Sabha, the Committee adopted the policy of selective examination of audit paras. While over the years, the number of reports and paras have substantially increased, the percentage of paras examined by PAC each year has declined. During the period from 1947-48 to 1987-88, CAG had presented 226 Audit Reports containing 13457 paras.[5] Out of this, PAC examined 5409 paras and presented 523 Reports containing 16592 recommendations. Thus, the overall percentage of paras examined was about 40 per cent. During the last few years, the PAC is able to examine only a fraction of paras contained in the Audit Reports. For example, during 1998-99, PAC selected 7 per cent of the total 1197 paras included in CAG's Central Audit Report. Actual examination was confined to 2 per cent of the paras. The following Table[6] gives some details about the Committee's working:

Period (PAC)	No. of Sittings	No. of subjects Selected	Reports Presented
Aug. 1998 to April 1999	25 days 1 by Sub-Com.	75	5 Original Reports, including 2 on Appropriation Account and 6 Action Taken Reports
May 1997 to Dec. 1997	19 days 5 by Sub-Com.	71	6 Original Reports, including 1 on Appropriation Account and 4 Action Taken Reports
Sept. 1996 to April 1997	26 days 6 by Sub-Com.	31	6 Original Reports, including 4 on Appropriation Account and 8 Action Taken Reports

For paras not selected for oral examination by PAC, the Committee has devised a procedure that Ministries concerned shall submit a note indicating remedial and corrective action taken, duly vetted by Audit. However, the system is hardly satisfactory and unless the Committee itself examines the issue, the accountability of Ministries for financial malfeasance cannot be enforced. R.K. Chandrashekharan[7], a former Dy. CAG and historian of Audit Department, points out: "Non-pursuance of the paras not selected for examination in a regular and effective manner virtually left them out in the cold which perhaps unwittingly encouraged the administration to play the game of wait and see until the natural demise of the paras in most of the Reports."

Public Accounts Committee of the State Governments

The functioning of Public Accounts Committee in most States is far from satisfactory. In several States, the PACs are not constituted in time, they meet infrequently and the consideration of Audit Reports is heavily in arrears. Annexure I gives an idea of the functioning of PACs in various States for three years from 1998-99 to 2000-2001. In J&K, PAC has not even been constituted. To get an idea of the backlog of work, Audit Reports currently being discussed in some of the States as of January 2001, are as follows: Assam from 1991-92 onwards; Andhra Pradesh—1995-96; Punjab 1990-91 to 1997-98; Haryana—1995-96; Kerala—1986-87 to 1998-99; Maharashtra—1996-97; Karnataka—1992-93 to 1996-97; Tamil Nadu—1995-96 onwards; West Bengal—1992-93 to 1998-99. By its very nature, audit findings are reported after a lapse of considerable period from the time the event has taken place. If the consideration of report is delayed by as much as five to ten years, the value of the recommendation is lost.

Excess Expenditure over Voted Grants by States

A major problem with State PACs, unlike its counterpart at the Centre, is that they do not separately consider report on Appropriation Accounts included in the Audit Reports of the CAG. A huge sum of excess expenditure over voted grants by various States is lying unregularised.

Articles 112 to 117 in the case of Union Government and articles 202 to 207 in the case of States lay down the procedure for presentation and approval by the Parliament and the State Legislature of the Budgets of the Central/State Governments. The Appropriation Act passed by the Legislature contains the authority to appropriate the specified sums from the Consolidated Fund of India/States for specified services. Appropriation accounts are prepared every year indicating the gross amounts on various services actually spent *vis a vis* that authorised by Appropriation Act. The CAG conducts appropriation audit under articles 149 and 151 of the Constitution to ascertain that the expenditure actually incurred under various Grants is within the authorisation and the expenditure is in conformity with the law, rules and regulations. Appropriation audit conducted by CAG shows that State Governments have been spending money much beyond the ceilings imposed for each Department while passing the Annual Financial Statement (Budget) and no serious action has been taken to obtain sanction of Legislature to regularise it. A staggering sum of over Rs. 93,300 crore was spent over Voted Grant by the States as on March 1999, the latest year for which data is available (Annexure II). Excess expenditure of Rs. 22,767 crore over Voted Grant has been incurred by J&K; Rs. 13618 crore by UP; Rs. 12,569 crore by Assam; Rs. 6,058 crore by Bihar; and Rs. 5294 crore by West Bengal and has not been regularised for periods as long as ten to twenty-five years.

According to articles 113(2) and 203(2) of the Constitution, the estimates of expenditure in the form of Demands for Grants is submitted to Parliament/State Legislatures (with a view to laying down limits of expenditure for each Department such as Health, Police, Public Works, etc.) The Constitution has a provision that in an exceptional case where expenditure exceeds the Grant, it should be regularised by the Legislature. Articles 115 (b) and 205 (b) states: "if any money has been spent on any service during a financial year in excess of the amount granted by that service and for that year", a statement showing the amount of that expenditure and the demand of that excess should be laid before the House. The excess expenditure is regularised on the basis of the recommendation of the Public Accounts Committee as per procedure laid down. As per established procedure, the Ministries and Departments furnish to the PAC explanatory notes giving reasons leading to excesses under each Grant and the PAC examines in the light of these notes the circumstances leading to such excesses and presents a report to Parliament/Legislature, recommending regularisation of the excesses subject to such observations as it chooses to make.

As PACs are not functioning effectively in most States, a huge amount of *excess expenditure* remains unregularised. This is fraught with serious consequences and may result in fraud as was the case with the Animal Husbandry scam in Bihar. There was excess expenditure in Grant of Animal Husbandry Department in Bihar, in each of the years from 1987-88 to 1995-96 (for example, for 1993-94 while the budgetary Grant was Rs. 77.14 crore, an expenditure of Rs. 199.17 crore was incurred, in 1994-95 against the Grant of Rs. 74.40 crore, a sum of Rs. 245.01 crore was spent and in 1995-96 against Grant of Rs. 82.12 crore, Rs. 228.61 crore was spent). The Bihar PAC never met to examine such serious violations of financial rules and as a result the irregularity continued for years. Much of the problem of *excess expenditure* arises as we do not have in India a system of exchequer control which ensures that no money can be drawn over budgetary grants. In UK, New Zealand and other countries, the law empowers the CAG to exercise this power and no money can be drawn from Government Treasury unless Audit Office has certified that it can be lawfully paid.

Timely Submission of Accounts

Effective control of expenditure can be exercised only if Appropriation Accounts are timely submitted to the Parliament/State Legislature and desired remedial action taken. Most countries have statutory provisions regarding date of submission of audited accounts to Parliament. In UK, under the Exchequer & Audit Department Act of 1866, the Treasury is required to submit Accounts to CAG by 30 September and the CAG is required to submit certified accounts to Parliament by January of the following year to which they relate. In New Zealand, under the Public Finance Act of 1989, the Treasury is required to forward the Annual Financial Statement to the Audit Office by 31 August, following the end of the financial year and the Audit Office is required to give its opinion within thirty days of its receipt for placing it in the House of Representatives.

In India, there is considerable delay in the submission of Appropriation Accounts even of the Union Government to the Parliament. A study for eight years from 1992-93 to 1999-2000 shows that it takes over fifteen months from the close of the financial year for the audited accounts and the audit report thereon to be placed in the Parliament. It takes another year for the PAC to examine and Parliament to approve excess expenditure (Annexure III). There is need for accelerating the time cycle for preparation of Appropriation and Finance Accounts and its audit by CAG and regularisation of excess expenditure by PAC. Statutory provision to the following effect needs to be made:

- The Appropriation and Finance Accounts should be prepared and finalised by the Controller General of Accounts for Union Government and Accountant General (Accounts) for the State Government by 30 September of the following financial year to which they relate.

- CAG should certify the accounts within two months of its receipt and submit his report to Parliament/State Legislature by November of the following year to which they relate.

- The PAC should consider the accounts and make its recommendations regarding regularisation of excess expenditure by January and Parliament should approve the same by February (before presentation of next year's Budget) of the following year to which the accounts relate.

Thus, an amendment needs to be made in articles 115(b) and 205(b) of the Constitution prescribing the time limit within which excess expenditure of a particular year is to be approved by the Parliament/State Legislature.

Strengthening the PAC

There is little doubt that if parliamentary control over expenditure is to be real, the functioning of PAC has to be more effective. R.R. Morarka[8], former Chairman of the Committee observes: "There is no real control over Government spending. The implementation of Committee's recommendation is tardy. All this is due to inadequacy of time, both of Parliament and its Committees. The remedy, therefore, lies in strengthening of the Committee System and some effective step in this direction is the need of the hour." The National Commission to Review the Working of the Constitution headed by Justice Venkatachaliah has released a paper on *Efficacy of Public Audit System in India* for public comments, wherein it has been suggested that PAC be made a constitutional body by amending the Constitution. The life of the Committee be made five years to be co-extensive with the life of Parliament/State Legislature with one-third of its members retiring every two years somewhat on the pattern of the Rajya Sabha. It has also been suggested that PAC should examine all the reports of CAG within a time limit—say, one year from the date of presentation.

The PAC at present suffers from several limitations. Presently, the Secretary of the Ministry under whose jurisdiction the subject being taken up for examination by the Committee falls, appears for evidence before the Committee. The concerned officers who actually handled the matter do not appear before the Committee. Shri M.R. Masani, former Chairman of the Committee, observed that most of the time they have to deal with matters of past history, which did not have contemporaneous importance and too often the persons examined were not themselves the persons who had personally handled the case being investigated. He suggested calling for evidence, the actual officers who were responsible for dealing with the case in question. There is considerable merit in the suggestion. In USA, the Congressional Committees ask public men to give evidence before it and can subpoena them if they do not cooperate. The Committee investigating the recent Enron scandal in the US has asked its former

Chairman to give evidence before it. In USA, Secretaries of various Departments also give evidence before the Committee. The Public Accounts Committee in India has to find ways and means to make its functioning more effective.

Empowering Audit

It should be possible for PAC to examine all the reports of the CAG if the volume of the reports is reduced and their quality and content improved and only matters of critical importance included in the Audit Reports. It may be mentioned that in Britain, the PAC examines all the subjects contained in CAG's audit report. One reason why matters of lesser importance get included in the audit report is that the institution of CAG does not enjoy adequate powers to enforce its findings; as a result the Departments do not give adequate weight and take remedial action on its reports and these matters, therefore, have to be brought to the notice of the Legislature. A high powered Sub-Committee of the Chairman of Central PAC headed by E. Ayyapu Reddy, which had Chairmen of eight State PACs and CAG as members, expressed anguish at the lack of response of departmental officers to audit findings and observed that delayed response on the part of the Department is responsible for constant and repeated failure to enforce accountability and is just as serious as not taking up immediate investigation after lodging of First Information Report in a crime. The Committee observed:

> It is very depressing to find that in spite of audit reports revealing loss of public funds or misuse and misapplication of public funds, there is no investigating agency charged with the duty to probe into these aspects and identify the culprits responsible for them. Recommendations of Public Accounts Committee for investigation to enforce accountability for undisputed misuse of public funds are not yielding any tangible result for the simple reason that long lapse of time between transaction and the recommendations normally result in disappearance of incriminating evidence.[9]

The situation needs to be remedied by conferring quasi-judicial powers to Audit Officers so that they can summon the concerned officers before it to produce the relevant records and give evidence on oath and where loss of public money is established, require them to make good the loss. Audit Officers in countries such as New Zealand, Japan, Germany, France, South Korea, China and Thailand enjoy legal powers to take remedial action against public officials, if they find that they have caused loss of the State money or property through fraud, negligence and improper use.

There is also need for greater understanding between the PAC and the CAG regarding material to be presented in the Audit Reports so that full use of the same can be made. In USA, more than fifty per cent of the material presented in the reports of the General Accounting Office emanate as a result of Congressional request. Similar is the position in Great Britain where a good part of subjects investigated by CAG are taken up on the advice of the Public Accounts Committee.

Conclusion

Despite many limitations, the Public Accounts Committee has been able to introduce a modicum of financial discipline in the Government. Its close working relationship with CAG has helped Audit Department to enhance its own prestige and authority and enforce some accountability of public officials at grass root level. The consciousness of the Administration that there exists a parliamentary body to scrutinise what is being done by it, acts as a deterrent against any tendency towards slackness, negligence or arbitrariness on the part of the Executive. The following points merit consideration:

- There is a strong case for making the Committee a constitutional institution with clearly defined duties, functions and responsibilities and its life made co-terminus with the life of Parliament/State Legislature.
- A statutory provision needs to be made prescribing dates for presentation of Appropriation Accounts to Parliament/State Legislature and excess expenditure over Voted Grants should be regularised by it before the end of the next year to which the Accounts relate, if the control over budgetary appropriation as prescribed in the Constitution has to have real meaning.
- Public Audit and the institution of CAG be empowered and given more teeth to be able to enforce some action on its findings and check the present lackadaisical attitude on the part of public officials.

Parliament can enforce accountability of the Executive only through its control over national finance. The Public Accounts Committee is Parliament's instrument to enforce its authority. If the Committee is not able to discharge its function efficiently, it will have an adverse impact on the functioning of democratic institutions. Former British Prime Minister and a great votary of parliamentary financial control, William Gladstone, observed in March 1891: "The finance of the country is ultimately associated with the liberties of the country. If the House of Commons by any possibility lose the power of the control of the grants of public money, depend upon it, your liberty will be worth very little in comparison. That powerful leverage has been what is commonly known as power of the purse—the control of the House of Commons over public expenditure." There is need for the Public Accounts Committee to function effectively if Parliament has to act as a real bulwark for democracy and liberty in our country.

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[1] Einzig Paul, *The Control of the Purse* (Secker and Warburg, London 1959), p.18

[2] *Ibid.* p.236

[3] Chandrashekharan, R.K., *The Comptroller & Auditor General of India*, Asish Publishing House, New Delhi, 1990, (Vol. II), p.1153

[4] Malhotra, G.C., "Public Accounts Committees" in B.P. Mathur, ed. *Public Audit, Good Governance and Accountability* Mudrit, New Delhi, 2000, pp.56-58

[5] Chandrashekharan, *op. cit.* pp.1165-67

[6] Mukhopadhya, P.K., *Parliamentary Control Over Public Purse* (paper presented at National Conference on Legislative Control Over Public Purse, Lucknow), July 2000

[7] Chandrashekharan, *op. cit.*, Vol. IV, p.1868

[8] Morarka, R.R., *Parliamentary Control Over Public Expenditure in Indian Parliament*, ICPS, New Delhi, 1984, p.74

[9] *India: Accountability of Administration*, Lok Sabha Secretariat, Feb. 2000

ANNEXURE-I

PUBLIC ACCOUNTS COMMITTEE OF STATE LEGISLATURES

State	Year 1998-1999				Year 1999-2000				Year 2000-2001 (upto November 2000)				Year of Audit Report
	Month of Constitution of PAC	Total No. of sittings of PAC	No. of sittings to consider excess expenditure	No. of sittings to consider Audit Report	Month of constitution of PAC	Total No. of sittings of PAC	No. of sittings to consider excess expen-diture	No. of sittings to consider Audit Report	Month of constitution of PAC	Total number of sittings of PAC	No. of sittings to consider excess expenditure	No. of sittings to consider Audit Report	Currently being considered by PAC (November 2001)
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Andhra Pradesh	4/98	25	-	-	4/98	7	-	-	4/2000	16	-	-	1992-93 to 1997-98
Arunachal Pradesh	7/98	2	1	1	12/99	1	-	1	12/99	2	1	1	1997-98
Assam	12/98 (constituted for 30 months)	10	-	10	12/98	10	-	10	12/98	6	2	4	1991-92 to 1997-98
Bihar	5/98	49	Nil	49	5/98	46	25	21	4/2000	-	-	-	-
Gujarat	5/98	19	8	11	4/99	24	11	13	5/2000	10	4	6	-
Haryana	5/98	28	2	26	4/99	14	2	12	3/2000	34	2	32	1995-96
Himachal Pradesh	4/98	21	-	21	4/99	19	-	19	4/2000	17	-	17	1998-99
J & K	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Karnataka	5/98	27	-	12	5/98	17	-	7	12/99	4	-	4	1992-93 to 1996-97
Kerala	7/98	70	1	47	-	-	-	-	-	-	-	-	1986-87 to 1998-99
M.P.	4/98	Nil	-	Nil	3/99	11	-	11	4/2000	9	2	7	1996-97
Maharashtra	11/97	41	41	-	11/98	18	11	7	2/2000	8	1	5	1996-97
Manipur	3/98	20	17	17	3/99	22	18	18	3/2000	23	17	17	1999
Meghalaya	4/98	4	3	1	1/99	15	Nil	5	1/99	Nil	Nil	Nil	-
Mizoram	2/98	Nil	Nil	2/99	2	1	1	-	-	-	-	-	1998-99
Orissa	3/98	25	5	20	3/99	12	Nil	12	3/2000	19	Nil	19	1990-91 to 1997-98
Pondicherry	N.A.	N.A.	Nil	-	4/99	N.A.	-	2	7/2000	N.A.	-	Nil	1994-95
Punjab	-	40	-	40	-	48	-	48	-	49	-	49	1997-98
Rajasthan	3/98	7	-	-	2/99	25	-	-	4/2000	26	-	-	-
Sikkim	-	-	-	-	-	-	-	-	4/2000	Meets every Tuesday	-	-	-
Tamil Nadu	5/98	6	1	5	5/99	7	Nil	7	5/2000	5	Nil	5	1995-96
Tripura	3/98	21	-	21	3/99	29	-	29	7/2000	29	-	29	1996-97 to 1997-98
West Bengal	7/98	21	Nil	21	7/99	23	Nil	23	7/2000	9	Nil	9	1992-93 to 1998-99

Source: Collected from various Accountants General by NIFM, Faridabad (Information from UP and Nagaland not recorded)

ANNEXURE II

EXCESS REPORTED IN AUDIT REPORT WHICH IS TO BE REGULARISED (AS ON JAN. 2001)

Name of the State	Year of Report								
	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91
1	2	3	4	5	6	7	8	9	10
Andhra Pradesh	—	—	—	—	—	—	—	—	14.61
Arunachal Pradesh	—	—	—	—	19.27	9.06	54.51	17.49	28.61
Assam	—	16.77	136.62	51.18	59.69	105.91	75.82	64.26	936.46
Bihar	193.59	227.36	2.66	15.17	87.43	420.66	166.92	228.65	330.07
Goa	—	—	—	—	—	—	—	—	—
Gujarat	—	—	—	—	—	—	75.12	112.51	—
Haryana	—	—	—	—	—	—	—	—	—
Himachal Pradesh	—	—	—	—	—	—	—	—	—
J & K	389.63	176.75	65.42	19.64	104.22	177.32	438.42	205.23	427.72
Karnataka	—	—	—	—	—	—	—	25.89	35.73
Kerala	—	3.69	29.36	35.65	0.00	3.31	5.05	44.35	194.53

1	2	3	4	5	6	7	8	9	10
Madhya Pradesh	—	—	—	—	—	—	—	112.01	119.51
Maharashtra	—	—	—	—	—	—	—	—	—
Manipur	—	—	—	—	—	—	—	—	—
Meghalaya	9.84	7.74	8.89	5.88	0.95	3.06	1.52	6.37	3.21
Mizoram	—	—	—	—	—	—	—	—	—
Nagaland	—	—	—	—	—	—	19.60	—	72.43
Orissa	—	—	—	—	—	—	—	—	—
Pondicherry	—	—	—	—	—	—	—	—	—
Punjab	—	—	—	—	—	—	—	—	172.87
Rajasthan	—	—	—	—	—	—	—	—	—
Sikkim	—	—	—	—	—	—	—	—	—
Tamil Nadu	—	—	—	—	—	—	—	12.10	269.65
Tripura	—	—	—	—	—	—	—	—	—
Uttar Pradesh			261.86	399.37	398.02	480.66	560.36	497.23	2450.89
West Bengal	—	—	—	—	—	—	—	—	—
Total	593.06	432.31	504.81	526.89	669.58	1199.98	1397.32	1326.09	5056.29

Name of the State	Year of Report								
	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	Total
1	11	12	13	14	15	16	17	18	19
Andhra Pradesh	101.25	72.34	180.70	389.93	236.23	290.99	405.12	307.55	1998.72
Arunachal Pradesh	63.12	27.91	30.66	64.45	38.41	14.86	25.34	25.26	418.95
Assam	187.07	222.83	259.15	1039.73	1805.56	1824.23	2618.2	3165.45	12568.93
Bihar	1228.67	1462.10	703.17	318.23	405.08	256.38	12.19	0.33	6058.66
Goa	1.81	20.41	19.65	0.90	0.09	14.75	11.96	1.35	70.92
Gujarat	387.89	427.15	574.79	372.75	564.16	534.27	733.90	981.27	4763.81
Haryana	—	—	—	32.36	60.34	70.57	137.95	449.96	751.18
Himachal Pradesh	—	—	—	—	—	681.47	2275.37	1837.10	4793.94
J & K	1152.23	1029.71	1730.09	2057.50	2936.89	3482.20	4189.21	4185.25	22767.43
Karnataka	58.99	107.47	57.47	8.35	27.79	104.40	84.01	35.86	545.96
Kerala	341.97	418.50	112.63	24.81	46.11	1.12	35.97	115.41	1412.46
Madhya Pradesh	258.58	189.32	258.11	407.46	251.59	224.17	302.79	1276.45	3399.99
Maharashtra	—	—	182.78	266.04	297.12	256.16	895.47	1064.06	2961.63
Manipur	—	—	—	29.47	22.39	176.73	384.57	293.66	906.82

1	11	12	13	14	15	16	17	18	19
Meghalaya	3.88	34.31	264.26	183.33	12.71	9.83	8.10	22.81	586.69
Mizoram	—	—	—	170.75	123.80	379.62	658.17	532.11	1864.45
Nagaland	152.27	371.02	32.86	76.66	42.55	33.43	241.09	263.80	1305.71
Orissa	—	—	—	—	—	616.67	989.97	126.26	1732.90
Pondicherry	—	—	—	—	—	—	0.37	0.00	0.37
Punjab	169.01	486.57	147.48	306.03	230.40	254.67	312.98	242.80	2322.81
Rajasthan	—	158.33	116.57	850.94	468.04	527.31	63.07	63.67	2247.93
Sikkim	—	—	—	—	—	0.97	0.01	0.87	1.85
Tamil Nadu	167.82	49.37	39.42	208.21	112.51	284.32	299.42	232.85	1675.67
Tripura				38.21	22.65	26.17	44.07	113.06	244.16
Uttar Pradesh	1158.06	1815.56	930.59	2011.01	621.43	711.95	590.21	730.56	13617.76
West Bengal	—	—	—	—	403.78	3011.22	1442.18	436.69	5293.87
Total	5432.62	6892.90	5640.38	8857.12	8729.63	13788.46	16761.69	16504.44	94313.57

Bihar figure in 1982-83 represents unregularised excess for the period from 1977-78
J&K figure in 1982-83 represents unregularised excess for the period from 1980-81
Meghalaya figure in 1982-83 represents unregularised excess for the period from 1971-72
Source: Office of CAG of India

ANNEXURE - III

DATE OF APPROVAL OF EXCESS EXPENDITURE OVER VOTED GRANTS — UNION (CIVIL) BY PUBLIC ACCOUNTS COMMITTEE/PARLIAMENT

Reports of the CAG Union (Civil) Years	Approved by CAG on	Presented to Parliament	Excess Expenditure (Rs. in crores)	Recommended by PAC for Regularisation	Date of Regularisation of Excess by Parliament	Remarks
1992-93	11.03.94	13.05.94	28.25	27.03.95	30.08.95	-
1993-94	29.03.95	03.05.95	6.72	05.12.95	Not available	-
1994-95	04.03.96	17.07.96	47.03	20.12.96	25.03.97	-
1995-96	04.04.97	08.05.97	8.44	20.11.97	07.07.98	-
1996-97	08.05.98	05.07.98	67.29	08.12.98	01.04.99	-
1997-98	12.4.99	29.10.99	13.66	27.4.2000	22.8.2000	-
1998-99	17.04.2000	15.05.2000	11824.46	25.7.2001	Not available	-
1999-2000	28.6.2001	10.8.2001	58.80	Report not yet presented (till Feb. 2002)	-	-
2000-2001	Not yet presented (till Feb. 2002)	-	-	-	-	-

PART V : PARLIAMENT, DEVELOPMENT AND GOOD GOVERNANCE

PART V : PARLIAMENT, DEVELOPMENT AND GOOD GOVERNANCE

ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

Sonia Gandhi

Introduction

Faster economic growth has been the goal of Indian planning all through the past five decades. But we have never looked at growth narrowly in isolation of its larger social dimension. Equity has been as important as efficiency. Balanced internal development has been as important as international competitiveness. Distribution has been as important as production. And in keeping with the Indian tradition, growth has also been seen through the perspective of harmony with nature in its myriad forms.

It was Indiraji who reminded us thirty years ago that continuing poverty is as much a pollutant as prosperity based on voracious consumption. More than anyone else, she made the country aware of the need to balance the imperative for development with a concern for the environment. She established institutions in Government to help bring about the balance and she did not lose any opportunity for sensitizing the people to the development-environment relationship.

Rajiv Gandhi inherited this abiding passion of hers. Among the very first announcements he made after becoming Prime Minister in January 1985 related to the establishment of the National Wasteland Development Board and to the launching of a massive project to clean the Ganga, the very lifeline of Indian civilization. Rajiv Gandhi was also actively aware of the need for environmental and sustainable development to become not just a bureaucratic initiative but something that permeated the entire political process and emerged as a peoples' movement. Hence, he invited eminent NGOs and environmental activists to interact with his ministerial colleagues and parliamentarians and to educate the political class.

Development and Environmental Conservation

Underlying these initiatives is the message that development and environmental conservation must go hand in hand. There can be no sustainable development if there is environmental degradation. Conversely, in the absence of development, degeneration of the environment is virtually inevitable. We must rise above the traditional view that growth and environment are not compatible. We must recognise that we cannot separate conservation from human beings. An exclusive model of conservation undermines the long-term security of the environment and renders sterile all development efforts. The dependence of millions of our country people on the forests and natural habitats actually fortifies the environment, it does not weaken it. Traditional and indigenous knowledge, enhanced by modern technology, is still the best building block for models of sustainable development. We have to, therefore, strive towards a system where people are the central partners in the management and utilization of our environment.

The inter-dependence of environment and development becomes clearer if we view the environment in its entirety and not in separated compartments called 'wildlife', 'forests', 'rivers' or 'habitats'. An inclusive perspective of environment that takes into account the entire biodiversity and encompasses the variety of all life can more easily incorporate sustainable models of development.

Innovative Programmes

In recent times, Congress-ruled States like Madhya Pradesh have started a number of highly innovative programmes in areas like watershed development and afforestation and natural resource conservation with the close involvement of panchayats. These programmes have gained widespread recognition and demonstrate how inspired political leadership can galvanise public action in the cause of sustainable development. The Delhi Government has started a number of schemes to involve school children in spreading the message of conservation and proper use of natural resources. Many States have now embarked on the preparation of human development reports. Environmental issues as they relate to the day-to-day lives of the people, particularly of the weaker sections of society, must form an integral part of these reports.

Role of Parliamentarians

Ecological and conservation needs, and the requirements of local populations should be the overriding concerns while formulating models of development. These needs and requirements should be accurately understood and identified by the peoples' representatives and brought to Parliament and our Legislatures. The role of our Legislatures, thereafter, is not only to enact appropriate legislations but also to explain the initiatives to the people, create awareness and harness their cooperation. The job of the Executive is to then provide the expertise, draw up participatory programmes and schemes, and ensure their proper implementation.

This delineation of roles can work only if elected democratic bodies at all levels are fully involved along with community based organisations, interest groups, NGOs and cooperatives. Governments, both State and Central, must work closely with, and demonstrate greater reliance on these bodies. Even at the highest levels, efforts to obtain feedback from people at the grassroots must be institutionalised. For instance, the Standing Committees and other Committees of Parliament can usefully regularise the practice of wide consultations with people's groups to enable both Parliament and Government to reach more informed decisions.

I am also convinced that Parliament itself and the State Legislatures must devote more time to discussing issues of sustainable development. This is a subject where we will find a great degree of agreement among different political parties and it should be relatively easy to translate this consensus into a concrete plan of action with specific outcomes that can be monitored, verified and actually felt and seen. It is up to us now to change this state of affairs and accord greater emphasis on basic developmental issues like family planning, education, health, nutrition and environment in our deliberations.

Imperative of Concerted Action

We must also begin to appreciate that a development strategy that is fiscally not sustainable will simply not be able to meet either developmental or environmental concerns. That is why it is absolutely imperative that the structure of public expenditures both at the Central and State Government levels reflect pressing socio-economic tasks and challenges and that the capacity of Governments to enhance productive investments to expand physical and social infrastructure is strengthened significantly. This imperative also emphasises the need to mobilise the cooperation of the people, their legitimate organisations, voluntary bodies and the corporate sector in environment-friendly sustainable development schemes. In fact, Government's responsibility is increasingly becoming more to mobilise informed support from the non-government sector for implementing programmes than to execute the programmes themselves.

This will not happen without political parties getting together and formulating an agreed agenda that keeps the interests of the poor and the disadvantaged paramount. Herein lies another major role of Parliament and our Legislatures. Through debate and discussion, they remain the best fora for hammering out consensus between parties on vital conservation-development issues of common interest. The more time we give to discuss such issues, the more likely it is that parties will rise above narrower political concerns in matters of national interest, giving birth to broad based agreement and concerted action, backed by the necessary political will.

Emerging Challenges

Environment has also become a vital subject of international negotiations. There are a large number of multilateral environmental agreements. In September 2002, the United Nations Conference on Sustainable Development is to take place in Johannesburg, South Africa to review progress made since the last Earth Summit held a decade ago in Brazil. Like others, India too has made a number of commitments to protect its biodiversity and ensure its sustainable utilization. Parliament has to act with full responsibility in ratifying these commitments and enacting laws that fulfil them, while at the same time protecting and promoting national interests. There are also threats that we need to be concerned about. For example, the recently concluded WTO Ministerial Meeting in Doha has decided to launch negotiations on the link between trade and environment, an issue that is fraught with risks. This is an area that both the Executive and Parliament have to keep under close surveillance and ensure that India's developmental interests are not jeopardized and that environment is not used as a cover for neo-protectionism in developed economies. It is also important to build up a high degree of scientific and technological expertise to guide our position in international negotiations and for parliamentarians to establish networks and linkages with their counterparts in other countries so that our point of view gets the maximum possible coverage and attention.

In the long run, our environment will be best protected by rapid economic growth, elimination of poverty and ignorance and equitable distribution of opportunities and resources. Greater participation of the people in all mechanisms for bringing about this progress is essential. It is only then that the growth process can be made sustainable.

ENVIRONMENT AND SUSTAINABLE DEVELOPMENT—ROLE OF PARLIAMENT, EXECUTIVE AND THE PEOPLE

T.R. Baalu

Introduction

The environment, characterised by values of diversity—biological, cultural and linguistic—is intrinsic to life. The values of plants, animals, landscapes, natural resources and ecosystems, all constituting the environment, are, therefore, of utmost importance. As a developing nation, India is facing heavy pressures from a growing population and pervasive poverty. These pressures on the natural resources have caused extreme environmental degradation with consequent effects on the economic and social fabric of the country. India's major environmental challenges are directly attributable to a plethora of causes. The key environmental concerns in India include deforestation, soil erosion, overgrazing, desertification, threats to floral and faunal diversity, air pollution caused by industrial effluents and vehicular emissions, water pollution from raw sewage and pesticide, contaminated run-off from agricultural fields, shrinkage of potable water sources all over the country, over-population and concomitant strain on natural resources and energy-related environmental problems such as chemical and oil pollution. All these contribute conjointly to the degeneration of the sub-continent's environmental system.

Our Environmental Concerns

In this backdrop, environmental protection today has a very significant importance in all future developments. At the same time, given the enormity and complexity of the country's economic needs and the vulnerability of the delicate balance of ecology nurtured by the sub-continent's natural resources, the task is, no doubt, daunting. Nevertheless, we can say with pride that our policies and programmes have been giving a sharp focus to this vital issue during the last several decades. The first ever international initiative to protect the planet's environment was witnessed in the form of the Stockholm Conference on Environment held in June 1972, which was attended by only two Heads of Government, and one among them was the Prime Minister of India. The Protection of environment and attainment of sustainable development call for a collaborative endeavour involving the people, their representatives and the Government at domestic level as well as an over-arching cooperation among nations and regions at the global level. The people, their representatives in the Legislatures and other non-governmental organisations, and the Executive, all have very important roles to play in accomplishing the task of protecting the environment and ensuring sustainable development at the same time.

India has not looked back since the Stockholm Conference of 1972 where we had reaffirmed our total commitment to the cause of environment. Since then, a host of comprehensive policy measures to protect the environment and combat pollution have been adopted and implemented by the Government. The Government's initiatives have been strongly backed by a number of important legislations made by the Parliament in the field of environment, including forests and wildlife. In fact, India is the first country which has enshrined the safeguarding of environment in its Constitution. By the Constitution (Forty-second) Amendment Act, 1976, provisions to this effect were incorporated in the Constitution with effect from 3 January 1977. Further, the Directive Principles of State Policy were enlarged by means of article 48A which enjoins upon the States to make endeavour for protection and improvement of the environment and for safeguarding the forests and wildlife of the country. Another landmark provision was also made by the same amendment whereby caring of environment was made one of the Fundamental Duties of every citizen of India. This provision contained in article 51-A (g) of the Constitution, stipulates that it shall be the duty of every citizen of India to protect and improve natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures.

The Parliament of India, in pursuance of the various constitutional provisions, has been guiding the destiny of the nation insofar as environment protection is concerned in the right direction and path.

Way back in the year 1974, the Water (Prevention and Control of Pollution) Act was enacted by the Parliament. This was the first legislative proclamation ordained by the Indian Parliament in pursuit of environmental conservation and also the first specific and comprehensive legislation institutionalising simultaneously the regulatory agencies for controlling water pollution. The Pollution Control Boards at the Centre and in the States came into being in terms of this law. Another related legislation enacted was the Water (Prevention and Control of Pollution) Cess Act, 1977 in order to conserve this vital natural resource and to augment the finances of the Pollution Control Boards. Thereafter, the Air (Prevention and Control of Pollution) Act was enacted by the Parliament in the year 1981. Subsequently, in the year 1986, the Parliament enacted an umbrella legislation for environment, namely, the Environment (Protection) Act, as the Water and Air Acts were designed to deal with only water and air pollution problems. Likewise, to protect the forests, the flora and fauna and other wildlife from mindless exploitation for immediate economic gains, the Wildlife (Protection) Act was legislated in the year 1972 and the Forest (Conservation) Act in the year 1980.

Environment and Development

Environmental sustainability in the context of growing social and economic complexities in a country of India's size needs to be strategy-based. In India, sustainable development needs to be structured on the three pillars of economic, social and environmental sustainability. Since the last few Plan periods, our planning process has increasingly started looking at medium term planning, not merely as a tool for economic growth but also as a means of achieving sustainable development. Social and environmental concerns have been reflected in our planning process. As we go on further implementing our Plans, the need for a more harmonious and balanced growth is being felt.

Resource conservation and management have been integral to India's developmental plans. We have a number of policy instruments in the areas of agriculture and rural development, health, prevention of adverse environmental impacts, waste minimization, pollution abatement, power renewables, afforestation and restoration of degraded lands. We also have a wide range of national programmes that are under implementation in various sectors such as energy conservation, promotion of renewable energy, control of air pollution, afforestation and wasteland development, economic reforms, subsidy removal and joint ventures in capital goods and fuel substitution policies. Thus, as one could discern, the thrust of the Indian development strategy is to chart a growth path that is not only sustainable but also socially equitable and culturally acceptable.

India and Global Environmental Campaigns

As a modern, civilized and forward looking society, the Indian people and the Indian nation are required to function as a more responsible member of the larger international community. This responsibility cast on our shoulders by ourselves is all the more important now in this era of barrier breaking globalisation. It is more true in regard to protecting the human environment because, by its nature, the earth's environment is a common property gifted to the entire humanity. The responsibility of integrating global and national environmental concerns into the domestic sectoral plans rests with the Planning Commission, Government of India, which prepares Five-Year Plans to set directions and targets for economic growth. In the context of global environment, India has all along appreciated the importance of global partnerships. At the United Nations Conference on Environment and Development (UNCED) in Rio, a balance was drawn between developmental and environmental imperatives and, a framework for assistance by the international community to complement and support the efforts of the developing countries to realise sustainable development was created. This concept was designed to meet the requirements of both the supporters of economic development as well as of those concerned primarily with environmental conservation. Consequently, the post-Rio phase has seen the proliferation of international environment agreements which have become the major channels for national, international and regional cooperation. India has been in the forefront of such global partnerships and international initiatives, and is a signatory to several major Conventions and Protocols. The World Summit on Sustainable Development (WSSD), also popularly referred to as Rio+10, to be held in Johannesburg in September 2002 will take a critical appraisal of implementation of UNCED initiatives, and strive for a comprehensive review of the past ten years, since 1992.

Environmental concerns largely fall under the purview of the Ministry of Environment and Forests (MoEF). The MoEF functions as the nodal agency for participation in various international Conventions relating to environment, including the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Convention to Combat Desertification (UNCCD), the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the Convention on Wetlands of International Importance, the Convention on the Conservation of Migratory Species of Wild Animals (CMS), the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on Transboundary Movement of Hazardous Substances, the Stockholm Convention on Persistent Organic Pollutants (POPs), etc. The implementation of various Conventions is based on a precautionary principle and calls for action by the country Parties to take measures to anticipate, prevent or minimize the causes of loss in biodiversity, climate change and other environmental concerns.

In the context of the environmental agreements, a significant achievement has been the establishment of the Global Environment Facility (GEF). India has been able to ensure one of the largest commitment of funds from the GEF which is a financial mechanism based on grants and low interest loans to developing countries to help them carry out programmes for the protection of environment. In particular, the programmes related to climate change, the conservation and sustainable use of bio-diversity, reduction of ozone layer depletion, the protection of international waters, and other global environment challenges are of special significance.

As a signatory to the various Conventions and towards fulfilling specific commitments set out by the Conventions, India has achieved numerous milestones. With regard to the Convention on Biological Diversity (CBD), GEF had provided funding for the preparation of the Government of India's national report to the CBD in December 1997. In 1994, the MoEF initiated action for the preparation of a National Bio-diversity Action Plan to determine national level objectives and strategies to guide the conservation and sustainable use of biodiversity. The draft Biodiversity Action Plan (BAP) was the first step towards formulation of a comprehensive National Biodiversity Strategy and Action Plan (NBSAP) which proposes measures to address issues and action points emanating from the CBD. In addition, a legislation on biodiversity has also been prepared and introduced in Parliament which comprises provisions regulating the access to genetic resources; equitable sharing of benefits; conservation of endangered species; and protection of biodiversity-rich areas. The Environment Action Programme (EAP), a strategy document prepared by the MoEF in 1993, aims at facilitating the integration of environmental considerations into development programmes.

Conservation of Forests

The conservation of forest resources is vital to the protection of the natural environment. The National Forestry Action Programme (NFAP) addresses the problems of the forestry sector by adopting necessary strategies and a plan of action for sustainable forestry development in the country. India's successful endeavour in expanding the forest cover is widely acknowledged. Forests in India cover 19.27 per cent of the land mass. The carbon emissions from forestry are offset by carbon sequestration leading to no net carbon emissions. The Forest (Conservation) Act, 1980, was further strengthened in 1988. A massive afforestation programme, establishment of reserves and re-vegetation of degraded lands through joint forest management and people's participation have contributed to our success in forest conservation and net carbon sequestration. Indian forestry has a management experience of more than 125 years. Knowledge of this science is deep rooted in the traditional and modern system practised by scientists as well as common people of India. Forest technology such as reclamation of deserts, arresting of advancement of deserts as well as utilising natural resources of deserts to the advantage of people have been crystallised over the period and many such programmes are under implementation. From the desert afforestation programmes, the rural population living in these areas are deriving many benefits. Even in the areas where rainfall is only three inches, soil and water conservation measures have been given top priority for sustainable development of natural resources, including the bio-diversity of the area to the best advantage of human beings. Further, the enforcement of the Forest (Conservation) Act, 1980 ensures that the diversion of forest land for non-forest use is subject to strict scrutiny and is regulated in a manner that reduces diversion to the minimum.

Land Improvement Programmes

India has always laid stress on efforts to better define the linkages between land degradation, particularly desertification and deforestation, and its focal areas. Issues of desertification under the UNCCD are dealt with using a multi-sectoral and multi-disciplinary approach. In India, the process of land degradation is surging forward, and has become a matter of serious concern to the Governments at the Centre and in the States. Therefore, concerted efforts to create public awareness and land improvement programmes must be tied up with income generation activities to make the efforts easily adaptable and productive. Such programmes are being implemented in the form of a number of Central sector and Centrally sponsored schemes, mainly through the Ministries of Agriculture, Rural Development and Environment and Forests. In this context, the National Forestry Action Programme drawn up by the MoEF for afforestation of degraded forest lands in the country is of significance. Environment programmes of the Government of India mainly address issues, including soil conservation in catchment areas of flood-prone rivers, integrated watershed management, development and stabilisation of ravines, control of shifting cultivation, dry land management, drought and desert development programmes, joint forest management and social forestry.

State of Environment Reports

As part of India's preparations for WSSD, the Ministry of Environment and Forests, Government of India, has proposed to introduce a scheme in the Tenth Five-Year Plan for the preparation of State of Environment (SoE) reports for the States/Union territories of India. The state of natural and physical environments is often ignored while conceiving development programmes of the States. The SoE scheme of MoEF has been devised to bridge this gap and sensitize the State Governments to the issue of environment and sustainable development. The SoE reports essentially describe the state of environment of a city, State or the entire nation so that a baseline information database for awareness and remedial action can be developed. This forms the stepping stone for broader global concerns.

Cooperation with International Mechanism

In the past quarter of a century, concerns for the atmosphere have become widespread. As a result, climate change issues have been prioritized by the Government, in the line with the UNFCCC. The objective of the Convention is to stabilize greenhouse gas (GHG) concentrations in the atmosphere at a level that would prevent dangerous human induced interference with the climate system. Subsequently, the Kyoto Protocol to the Convention sets specific GHG limitation and reduction commitments for developed countries. India being a developing country is bound only by general commitments under the Convention and is not required to adopt any GHG deduction targets. We are required to regulate levels of GHG concentration in the atmosphere in order to avoid the occurrence of climate change on a level that would impede sustainable economic development. We have to acknowledge the fact that the share of global emissions originating in developing countries will grow as, in their view, the overriding priority of developing countries is economic and social progress and poverty eradication. India, too, recognizes that environmental degradation has been the outcome of social compulsions, and that fighting poverty is a prerequisite for sustainable development. India's production and consumption patterns are evident from its very low per capita greenhouse gas emissions which is only one-sixth of the world average. In any case, we in India have been following a planned approach to development, and hence have subscribed to the twin objectives of socio-economic growth and sustainability. Energy plays a major role in India's developmental efforts and the objective to alleviate poverty. Accordingly, energy efficiency and conservation, promotion of renewables, and the building up of natural resources and forests are key aspects of India's environment development objectives.

Clean Development Mechanisms

Matters related to the clean development mechanism (CDM), emissions trading and projects implemented jointly between developed countries, transfer of technologies, land use change and forestry are some of the key issues before the Government of India. A clean development mechanism has been defined wherein developed countries will assist developing countries in return for emission reduction certification for achieving sustainable development which contributes to the stabilization of GHG atmospheric concentrations at safe levels. The CDM is projected as a new source of financial flows and technology to developing countries. This is in consideration that total emissions from developing countries are rising. In the context of CDM, developed countries are particularly highlighting the potential of the energy sector, the argument being that developing countries have a 'late-comer' advantage with respect to the introduction of energy efficient technologies, and that without the encumbrance of past investments, they have the opportunity to introduce more efficient technologies from the outset.

Climate Change

Several activities have been completed and new ones are being taken up in the area of climate change. India's approach towards implementation of the UN Framework Convention is covered within policy declarations, such as the National Conservation Strategy and Policy Statement on Environment and Development, 1992; the Policy Statement on Abatement of Pollution, 1992; the Air Pollution (Prevention and Control) Act, 1981 amended in 1987; and the Motor Vehicles Act, 1939, amended in 1988 for regulating various environmental parameters.

Pollution Control

The national Environmental Action Plan for control of pollution envisages controlling pollution from various sources, such as industrial, domestic, vehicular and agricultural and also noise pollution. The Delhi Action Plan, a White Paper containing an Action Plan for control of pollution in Delhi, is being implemented. It further deals with the supply of unleaded petrol, phasing out of fifteen years' old commercial vehicles and conformity to Euro-II norms. Surveys to ascertain environmental status in the metro cities have also been conducted. Standards have been prescribed for grossly polluting industries discharging their effluents into rivers and lakes. A scheme for setting up of Common Effluent Treatment Plants (CETPs) in clusters of small scale industries has been undertaken in the country. Source-specific standards for the portable generator sets and bursting of crackers have been evolved and revision of noise standards for automobiles has been taken up which are equal to the standards notified by the European Community during 1996. A draft notification on ambient noise standards has been brought out under the Environment Protection Act, 1986 to control noise pollution, especially in urban areas.

Ozone Depletion

We are also committed to phasing out the production and consumption of the controlled Ozone-Depleting Substances (ODS) within the timeframe and limits specified in the Montreal Protocol, although the per capita consumption of ODS is below the level permitted under the Protocol. In 1993, India prepared a detailed India Country Programme (CP) to phase out ODS in accordance with its national industrial development strategy. The projections for unconstrained ODS consumption were made in 1993 based on the development plans of each sector using these substances. In order to ensure minimum economic dislocation and obsolescence costs, an Ozone cell in the MoEF carries out integration of policies and programmes through inter-ministerial interactions.

Waste Management

The Government also supports the principles of the Basel Convention which lays emphasis on the need to improve the scientific understanding of the extent and cost of improper disposal, besides implementation of policies discouraging indiscriminate disposal and of incentives for waste minimization, adoption of cleaner technologies, and recycling of indigenously generated hazardous wastes. Major principles of this policy also include the concept of "polluter pays", risk reduction and avoidance of generation. India has imposed a ban on import of waste containing pesticide, herbicide, and their intermediates and residues. A comprehensive report on environmentally acceptable technologies for processing of waste oil and metallic wastes has been prepared. The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules have been promulgated in 1996. The MoEF has also notified Rules on bio-medical wastes in 1998. Industrial safety and disaster prevention related projects are being implemented with bilateral assistance.

People's Participation in Sustainable Development

As mentioned already, India being a democratic Welfare State, has enshrined in its Constitution the responsibility for fulfilment of at least the basic minimum needs and to improve the environment and quality of life of the people. The lifestyles of the people in a society largely contribute to environmental degradation. Therefore, the success of the environmental policies largely depends on the level of participation of all concerned people from different segments of the civil society.

The Government of India is keen on enlarging the decision-making role of local groups and communities in achieving the goals of environmental protection and sustainable development through activities that are complementary to the Government actions. For instance, the process of consultations with non-governmental organisations representing local, national and global interests in designing, implementing and evaluating environment and development plans, programmes and projects is carried out invariably. Environment impact appraisal of projects has now been standardized where public hearing is an indispensable part of the assessment procedure. The Law Commission of India ensures that the widest sections of people are consulted in formulating proposals for law reforms. In this process, partnerships are established with professional bodies and academic institutions particularly in the context of the environment. Seminars and Workshops are organised in different parts of the country to elicit critical opinion on proposed strategies for reform. The Rule of Law which is the basis of a civil society is closely linked with access to law and justice. Public Interest Litigation (PIL) has now come to stay as an integral part of distributive justice as opposed to the restrictive concept of justice for the privileged few. The Supreme Court of India employs the PIL system as one of the most effective tools for enforcement of Fundamental Rights, as well as for creating a legal and social environment in which justice could be made available to the poor, the less privileged and the weaker segments of the populace.

Participatory Democracy

Significantly, the policy of empowerment of village communities (village, block and district levels) and their involvement in environmental activities, including natural resource management, has been strengthened through the Seventy-third and Seventy-fourth Constitution Amendment Acts of 1992. The concept of public involvement and its decision-making powers are best exemplified through the Panchayati Raj system which has been an age old tradition in India. The Seventy-third Amendment came into force to provide constitutional status to the Panchayati Raj Institutions which have been playing an important role in rural development in general and especially uplift of the downtrodden in rural areas. The Panchayati Raj system establishes a linkage between local leadership enjoying confidence of the people at grass roots and the Government, and helps to translate the policies of the Government into action. The *Gram Sabha,* the general assembly of villagers, has a key role for the effective functioning of Panchayats. Active functioning of the Panchayats would ensure participatory democracy with transparency, accountability and achievement.

Similarly, the Constitution (Seventy-fourth) Amendment Act, 1992 is a revolutionary piece of legislation by which the Constitution was amended to incorporate a separate Chapter on urban local bodies, which seeks to redefine their role, power, function and finances. Urban local bodies such as the Municipal Corporations, Municipal Councils and Town Panchayats have been constituted through universal adult franchise in each notified urban area of the country.

Role of Civil Society

As mentioned earlier, the lifestyles of the people also tend to have an impact on environmental degradation. In some developed countries, the scale of civil society organisations is comparable to that of the public sector. In developing countries, the most visible element of the civil society's growth is the growing number of non-governmental organisations (NGOs) that addresses specific problems or needs. It is crucial that civil society as a whole works towards achieving the goals of environmental protection and sustainable development through activities that are complementary to the Government actions. For them to do this successfully, their capacity to understand and disseminate the scientific, economic and social issues of environmental problems has to be augmented. Several initiatives have been taken up to achieve this objective.

In India, the NGO network is extensive. To that end, several policies and strategies have been formulated and various initiatives and schemes have been adopted by the Government. It recognises that in order to achieve sustainable development, meaningful participation of civil society, groups and organisations in decision-making on environmental matters is essential. Empowerment of women plays an important part in the strengthening of the civil society. Women are agents of environmental and economic change worldwide, and should be recognized for their role in managing resources and families. As the status of women improves, they become empowered to make independent decisions concerning their lives, fertility, and contributions to development processes. The Government of India has brought about specific legislations to protect and safeguard the rights of women. Significant programmes for the uplift of women include the *Indira Mahila Yojana,* the *Rashtriya Mahila Kosh* and the National Commission for Women. Parliament has a Committee on the Empowerment of Women consisting of 30 members which functions, *inter alia,* to consider the reports submitted by the National Commission for Women, and to report on the measures taken by the Union Government for improving the status and condition of women.

Framework for Trade and Environment

The Government of India has embarked on a macro-economic stabilization programme since 1991. Structural reforms in the foreign trade and payments regime, the tax system, industrial policy and the financial sector have been undertaken, all of which are likely to have implications on the environment front as well. While the Government is attempting to raise resources internally, the importance of international assistance cannot be minimized. Greater trading opportunities can enable developing countries to invest more in environmental protection. The World Trade Organization's (WTO) Committee on Trade and Environment has undertaken many of these activities. In its five years of work, it has promoted a dialogue among trade, development and environment communities and stressed the need for transparency, avoidance of unilateral action to deal with environmental challenges outside the jurisdiction of the importing country and avoidance of the use of trade restrictions or distortions as a means to offset the difference in costs arising from environmental distortions and protectionism. Further, priority work under the Committee and the United Nations Conference on Trade and Development (UNCTAD) should include elaborate studies for better understanding of the relationship between trade and environment, particularly for sustainable development in developing countries. India realizes the vital need for international cooperation—bilateral, multilateral, and regional—in implementing Agenda 21 adopted at Rio. We are committed to developing and strengthening the process of international cooperation which would cover not only cooperation among Governments and international agencies but also among other major players such as the private sector, civil society and voluntary organizations. The international community should develop a suitable, open, equitable, rule-based, cooperative, non-discriminatory and mutually beneficial economic environment at the international level. It should take into account the special needs of the developing countries in line with the concept of common but differentiated responsibilities affirmed in Agenda 21.

The environment and trade policy components of the Indian reform process undertaken since July 1991 have been motivated by a full recognition of the important role that trade can play in promoting sustained economic growth. The expanded scope for specializing in areas of comparative advantage is manifest in the improved growth performance of the economy. Furthermore, while exports have responded to the removal of the anti-export bias of a protectionist environment, domestic industry appears to have been stimulated by the expanded availability of imports and capital goods and the challenge of competing in the international market place. The positive response of Indian industry to deregulation is amply demonstrated by the growth in the capital goods sector. In an effort to remove the anti-export bias of existing policies, improve the efficiency of resource allocation as well as the competitiveness of domestic markets, India has made steady progress since 1991 in eliminating quantitative restrictions, licensing and discretionary controls over imports. Imports of capital goods, raw materials and components have been de-licensed, tariffs on such imports have been reduced substantially and tariff categories have been streamlined and simplified. As a result, all goods can now be freely imported and exported, except those belonging to two negative lists.

The Government of India believes that in order to make trade and environment mutually supportive, an open, multilateral trading system makes possible a more efficient allocation and use of resources. This contributes to increased production and incomes and lessens the demands on the environment. It also provides the additional resources needed for economic growth and development and improved environmental protection. Trade measures should be applied for environmental purposes only when they address the root causes of environmental degradation so as not to result in an unjustified restriction on trade. Further, environmental standards valid for developed countries may have unwarranted social and economic costs in developing countries. India believes that global efforts at environmental protection are best addressed through the Multilateral Environmental Agreements (MEAs) which contain a package of positive measures, including among them financial and technological transfers and capacity building.

Conclusion

Today, the world stands at the crossroads of history. Ten years after Rio, and as we enter the Third Millennium, it falls on the global community to create a world with a robust environment and where there is lesser deprivation. The developing portfolio of environmental projects in India clearly shows closer integration of multi-disciplinary activities in sectoral development programmes. However, in meeting the challenge of mainstreaming both local and global environment, there remains a need to become more collaborative. The past experience has taught us the need to develop operational flexibility to work with new partners in the environment sector and to develop more flexible procedures to ensure effective implementation of environment programmes. Credibility and realization of the potential of all international environmental activities can only be achieved through the full participation of all countries in their formulation, implementation and enjoyment of benefits.

SUSTAINABLE ENERGY DEVELOPMENT IN INDIA

Suresh Prabhu

Introduction

"Sustainable Development", is a term commonly defined as "economic and social development that meets the needs of the current generation without undermining the ability of future generations to meet their own needs". This almost universally quoted definition was produced in 1987 by the World Commission on Environment and Development (WCED), otherwise known as the Brundtland Commission. Since the mid 1970s, sustainable development has emerged as the preferred way of dealing with the rapid degradation of the natural environment. The first global meeting on this issue, the U.N. Conference on the Human Environment in 1972, focused mainly on the environmental issues such as pollution and waste that were most evident in the wealthy nations, and associated with industrial development and a rapid growth in consumption. Much less attention was given to the needs of lower income countries of the developing world (commonly referred to as the South because of their geographical position) for stronger and more stable economies as well as environmental improvement. Although the need to combine development and environment goals was becoming evident, more emphasis was placed on the "limits to growth" arising from shortages in resources such as metals and fossil fuels. The new concern for what later became labelled "sustainable development" is evident in the Cocoyoc Declaration of 1974, which addressed the issue of how to respect the "inner limit" of satisfying fundamental human needs within the "outer limits" of the Earth's carrying capacity. But it was the world conservation strategy of 1980 that launched sustainable development into the international policy arena, stressing the importance of integrating environmental protection and conservation values into the development process.

Development and Implementation of Nationally Sustainable Energy Policies

Energy is the *sine qua non* for development. Thus energy development has to take place for meeting the imperatives of development, meeting the needs for enhanced employment opportunities and productivity. The Indian economy uses a variety of energy sources both commercial and non-commercial, and the high rate of growth of energy demand in the years ahead could be sustained primarily through increased dependence on commercial energy sources such as coal, oil, natural gas and electricity. However, the energy supply system that has developed over the years has tended to depend more and more on non-renewable energy sources, the availability of which is severely limited. Moreover, development of some of these energy resources is beset with serious environmental implications. All these factors have raised questions about the long-term sustainability of such an energy development system. Moreover, with the rapid increase in demand for petroleum products, the country has become a heavy importer of oil. The present trends indicate that in the absence of adequate measures of demand management, India may have to resort to import of other forms of energy as well. This has also raised issues of long-term energy security in the country.

The population of India may exceed 1315 million by the end of the year 2020. The growth in GDP and its structural changes will have an effect on the demand for energy and the energy supply mix in future. The Indian per capita consumption of electricity is very low and is estimated at 348 units. The corresponding figure for China is 750 units and for USA it is as high as 13,000 units. The high rate of economic growth is likely to be accompanied by an increasing per capita income and changes in life styles. This will have an effect on the energy demand as well. In view of the rising awareness with regard to environmental protection and conservation, the future growth in energy sector must consider such concerns in order to develop in a manner which is environmentally benign. The key issues facing India which have energy implications are, therefore, rising population, need for economic growth, access to adequate commercial energy supply and the financial resources needed to achieve this, a rational energy pricing regime, improvements in energy efficiency of both energy supply and consumption, technological upgradation, a matching R&D base and environmental protection.

The adverse impacts of energy consumption and production can be mitigated either by reducing consumption or shifting energy supply options better able to support sustainable developmental objectives. The most cost effective option for sustainable energy development is to improve end-use efficiency. A substantial reduction in energy consumption can be achieved by using most efficient technologies available today which is cheaper than increasing supply. As the utilisation of natural gas expands at the expense of coal and oil, green house gas emissions will be reduced. Wind power is technically a major option for providing electricity and for sustainable development. Direct conservation of solar energy will be a cornerstone for a sustainable world energy system.

It has been estimated that to meet the full demand for electricity by 2012, India needs to add 100,000 MW of incremental capacity in the next decade. An added thrust will be given to the hydro sector so as to improve the hydro-thermal mix. The Central Electricity Authority has conducted a ranking study of all available hydro sites in order to speed up the exploitation of the hydro potential. There is, however, no denying that coal will remain our dominant fuel for power generation since India has an abundant supply of coal. India would, however, welcome clean coal technologies for power generation in order to mitigate the adverse environmental impact. Central Public Sector units have already adopted ISO 140001 Certificate and will be meeting the strict environment regulation in our country. The use of coal, which is our abundant resource, as a major fuel for power generation in India also adds to our energy security. The added thrust being given to the hydro sector will further reinforce this.

India is today recognised as one of the pioneering countries in the field of renewable sources of energy. It is perhaps the only country in the world which is implementing wide ranging programmes of renewable energy at the field level, starting from low technology areas such as improved *Chula* (domestic cooking stove) and biogas to high technology areas such as solar photo voltaic, wind power and small hydro. The potential for various forms of renewable energy is given below:

The Renewable Energy Sector in India

A pre-requisite for meeting additional energy needs of a developing country like India is the assured availability of energy on economically viable terms. Traditional fuels characterized by low levels of efficiency (10-15 per cent) still account for as much as 40 per cent of the country's energy supplies. Compounded annual growth rate for electricity demand in India has been about 9-10 per cent. According to present indications, it is estimated that in the next 20 years, the installed generating capacity should, on an average, increase by 10,000 MW every year. Undoubtedly, renewable energy technologies have a role to play in the socio-economic development of the communities. Their use is necessitated by the:

- Inability of conventional systems to meet growing energy demands in an equitable and sustainable manner.

- Large scale impact of conventional energy production and consumption on the physical and human environment.

Over the past decade, several renewable energy technologies have attained technological maturity, leading to commercialisation in their respective domains. The prevalent renewable energy technologies in the country are energy through biomass, solar energy (photovoltaic and thermal), small hydro-electricity and wind energy. Estimates of technical potential for renewable energy in the national statistics are presented in Table 1 below:

Table 1: Estimates of Technical Potential for Renewable Energy Technologies

Source/Systems	Approximate potential
Biogas plants (nos.)	12 million
Improved cook stoves (nos.)	120 million
Biomass energy	19500 MW
Solar energy	20 MW/sq. km.
Wind energy	45000 MW
Small hydro power	15000 MW
Ocean energy	50000 MW

Though renewable energy technologies (RETs) such as biogas plants and improved cook stoves have been available in India since the late 1940s, the programme itself was initiated on a very moderate scale in the wake of the energy crisis of 1973. As a result, the renewable energy resources such as solar, wind, small hydro, biomass, ocean thermal that are present in abundance, received closer attention. Further, as a follow-up to the 1981 UN Conference on New and Renewable Sources of Energy, the Government of India set up a high-powered Commission for Additional Sources of Energy (CASE) to draw up plans for achieving a harmonious transition from an economy based on hydrocarbons to one based on renewable energy resources. To provide focused attention to this sector, a separate Department of Non-conventional Energy Sources (DNES) was also created in 1982, under the Ministry of Energy, at par with Departments of Coal and Power.

In the 1990s, the importance of renewable energy sources as environmentally benign decentralised energy systems, especially for rural areas, was recognized by the Government, and a new thrust was given to renewable energy efforts in the Eighth Five-Year Plan (1992—97). Earlier, renewable technologies were disseminated and promoted through a number of administrative and financial incentives. In the new scheme, much greater reliance was placed on developing market linkages and promoting commercialisation by involving the private sector, rather than public investment, and providing more fiscal and tax incentives.

Keeping in view the economic policies adopted by the Government of India in 1991-92, resulting in delicensing in India, the Department of Non-conventional Energy Sources (DNES) was converted into the Ministry of Non-conventional Energy Sources (MNES) in July 1992. This was done primarily to give more autonomy and focus to the Department in the decision-making process and allocation of resources. During the initial years of its inception, the organisational structure of MNES was organised on a technology approach, meaning that every Division within the Ministry looked after one single technology, such as Solar PV, wind mills, improved cookstoves, etc.

Under the New Strategy and Action Plan of 1993, the following, two-pronged Action Plan was devised:

- High priority accorded to generation of grid quality power from wind energy, small hydropower, bio-energy and solar energy.
- Rural energisation programme to be promoted through:
  - electrification of villages through photovoltaic and biomass gassifier power systems.
  - supply of solar lanterns to unelectrified households.
  - use of solar water heating systems.
  - rural energy programmes, *viz.* National Project on Biogas Programme.
  - production of energy from agricultural waste, etc.

Table 2 shows the achievements in the field of RETs:

Table 2—Renewable Energy Status in India as on 31.3.2001

RET	Cumulative Installation
1	2
Family sized-Biogas plants (million)	3.26
Improved cookstoves (million)	34.3
Solar cookers (million)	0.500

1	2
Solar hot water systems (million sq.m.)	0.6
Solar Photovoltaic system (nos.)	8.5 lacs*
Windfarms (MW)	1500
Biomass power (MW)	358
Biomass gassifiers (MW)	43
Small Hydel (MW) (upto 25 MW)	1400
Energy from Wastes (MW)	17

*Aggregate capacity: 73 MW

Further to the efforts of the MNES and State energy development agencies, the Indian Renewal Energy Development Agency (IREDA) has played a vital role in giving a fillip to the renewable energy sector by providing much-needed financial support to the target group to expand the market base. The cumulative sanctions and disbursements as on 31 March 2001, were of the order of Rs. 46000 million and Rs. 21000 million, respectively, accounting for 1650 MW Power Generation Capacity and 9,35,000 MTCR/yr Conventional Fuel Replacement. The efforts by the Government are aimed at increasing the share of the power generation capacity of the country.

Solar Thermal Technologies

In 1984, with the formation of DNES, activities in this field were taken up in a purposeful mode in India. With the formation of the IREDA in 1987 for wide spread popularisation of these systems, soft loans were made available to the users for solar water heating systems. The solar thermal technologies, in different stages of commercialisation or R&D, are listed below:

- Solar water heating using flat plate collector.
- Solar cooker.
- Solar pond for process heating in low temperature range and for desalination.
- Solar concentrating collectors for process heating in low (400°C to 800°C) and medium (800°C to 2500°C) temperature ranges.
- Solar thermal power generation.

Solar Water Heating Systems (SWHS)

Solar water heating system using flat plate collector is one of the technologies which is technically and commercially mature. There are two distinct markets for solar water heating systems in India: domestic; and commercial and industrial. In the commercial sector, SWHSs are used to meet the hot water demand, *e.g.* in hotels, hospitals, etc., whereas in the industrial sector, these systems are used for pre-heating boiler feed water or to meet the process heating requirements. In the domestic sector, SWHSs are used to meet the hot water demand and are rarely used for space heating, which is common practice in European countries.

Looking at the vast potential and resource availability, the Government of India, through its Ministry of Non-conventional Energy Sources, provided various interventions in terms of subsidy and other fiscal benefits for the promotion of solar water heating systems. These subsidies were abolished later and provisions were made to avail soft loans through the Indian Renewable Energy Development Agency and some other designated banks. As a result of these promotional efforts, and with earlier efforts in the form of subsidy and demonstration, there is a steady increase in the cumulative number of collector area. The total collector area installed has increased from 1.19 lakh sq.m. in 1989 to 0.55 million sq.m. as on 31 December 2000.

Solar Ponds

Salinity gradient solar ponds are essentially low cost solar collectors with integrated storage and hence are potentially cheaper alternatives to flat plate collectors systems in suitable locations. A solar pond is a large reservoir of saline water, with the exception that a specific salinity (or density) profile is artificially created and maintained in the pond. Typically, a solar pond consists of three zones, *viz.*, an upper convective zone (UCZ) with a uniform low density, a non-convective zone (NCZ) with a gradually increasing density and a lower convective zone (LCZ), also called the storage zone, with a uniform high density. The solar radiation penetrating the pond is absorbed in the different layers and causes the temperature to raise. In a normal reservoir, the differential heating would set up convection currents by which the heated water will float up to the surface and lose heat to the surroundings by evaporation, convection and radiation. In a solar pond, however, the thermal convection is suppressed because of the unfavourable density gradient, and hence the hot layers remain hot. Heat extraction can be done either by submerged heat exchangers or by heat exchangers placed outside the pond, in which case hot brine from the pond is circulated through the external heat exchanger and pumped back to the storage zone.

Solar ponds have a low capital cost owing to the fact that they are based on low cost materials like clay, plastic and salt. However, solar ponds receive lesser amounts of solar radiation as they cannot be tilted, which means that the operating efficiency of solar ponds is lower in comparison to conventional flat plate collectors. The advantage of low initial cost, however, offsets the disadvantages of lower efficiency. This means that it is cheaper to produce hot water (or hot air) in the temperature range of 60°–80°C in comparison to conventional flat plate collectors.

Salt-gradient solar ponds are both appropriate and relevant in the Indian context. In India, though solar pond research dates back to 1971, none of these ponds were connected to any end-use. Moreover, the construction and operation of a large-sized solar pond (the largest solar pond so far was of 1600 square metres) was not tried out. The 6000 square metre, Bhuj solar pond at the Kachch Dairy, Bhuj, was conceived as an R&D project to demonstrate the feasibility of using a salt-gradient solar pond to deliver industrial process heat. The Bhuj solar pond is a major technology development effort undertaken jointly by a State energy promotion agency, a user industry, and a research institution. The Bhuj solar pond started supplying hot water to the dairy in September 1993, saving about 935 MT of lignite a year, at full capacity utilization of the solar pond.

The economic viability of a salinity-gradient solar pond is governed by factors such as its size, proximity to sources of inexpensive salt/bittern and water and land availability. The following niche areas have been identified after careful matching of these requirements with the deliverables:

- process heating
- water desalination
- refrigeration
- production of magnesium chloride
- bromine recovery from the bittern
- enhancement of the salt yield in the salt farms, etc.

Solar Cookers

Out of the many types of solar cookers, *viz.*, concentrating (dish) type solar cookers, indirect heating type solar cookers, with or without heat storage, and hybrid type solar cookers, the box type solar cookers have reached the commercialisation stage but in a restricted manner.

The Ministry of Non-conventional Energy Sources introduced in 1981 solar cookers as an alternative to other cooking fuels. The Central and State Governments put together subsidised the cooker to the tune of almost 50 per cent. After the withdrawal of the subsidy in 1994, MNES is providing financial assistance to nodal agencies and the manufactures (on 50 per cent cost sharing basis) for the promotion of cookers. Apart from this, funds have also been provided to the nodal agencies for establishing sales centres and servicing facilities. Moreover, to enhance the sales, soft loans are also being made available through IREDA and some commercial banks. With these efforts, the cumulative number of solar cookers sold till December 1999 have reached 4.80 lakh. Presently, there are about 55 manufacturers of solar cookers in the country.

Solar Photovoltaic (PV)

PV can be used both in decentralised and in grid-connected applications. It is suitable for rural remote areas, as well as for specialised applications such as in telecommunications. It is equally suitable for urban domestic or commercial establishments. Globally, PV systems are widely used in:

- Rural domestic households for lighting
- Urban commercial establishments for outdoor lighting
- Water pumping for irrigation and drinking water
- Telecommunication-rural telephone exchanges
- Railway signalling
- Battery charging
- Refrigeration
- Off-shore oil drilling stations
- Integrated in buildings

Portable lights, home lighting systems, water pumping systems and power plants are some of the well-developed and tested systems to cater to the above applications. Traditionally, Indian market has been divided based on end use applications as follows:

- MNES supported subsidy market primarily for socially driven schemes. System/products in this category have been lanterns, home lighting systems, water pumping, etc.

- Commercial market for specialised applications such as in Railways, telecommunications and exports.
- Consumer oriented market primarily driven by availability of finance.

The first segment of market consists of approximately 30 per cent of the aggregate system installed capacity. The market share for commercial segment has been 46 per cent and the remaining 24 per cent is accommodated by the consumer oriented market. The trend in Indian photovoltaic market has been following the global market, and is influenced by the global module prices. Factors such as availability and costs of solar cells on the one side, and market segments induced by Government policies and directions on the other, have governed the structure of the market. In India, annual production volumes have touched 11 MWp per year in the year 1997-98, with an aggregate system installed capacity of about 57 MWp as on 30 April 2000.

Wind Energy

The emergence of wind as one of the most cost-effective sources for power generation is relatively of recent origin. India quickly made a foray in the late 80's and in a decade added a total installed capacity of 1,080 MW making it the fifth country in the world. Over this decade, wind development in India has also gone through its ups and downs. The last two years have shown signs of revival and this is expected to continue in the near future considering the activities that are currently undergoing in the market. With the national wind potential estimated at 20,000 MW, there is clearly a scope for enhancing the pace of developments in the country.

As for the developments in India on the wind technology front, the effort has been mostly to adapt and customize the western designs to Indian wind and site conditions. Keeping pace with the wind power development in the country, the wind turbine technology has also improved over the years. The first wind turbines had an installed rated capacity of only 55 KW. Later 100 KW, 150 KW, and 200 KW wind turbines were developed and brought to the market. The mid 90's saw the installation of a large number of wind turbines of capacities in the range of 200 KW to 350 KW with the bulk of the market share going to wind turbines of capacity 200 KW to 250 KW. However, the late 90's saw higher capacity machines entering the Indian market. Today, wind turbines of capacities 500 KW, 600 KW, and 750 KW are available in the Indian market. Also, in this last decade, the wind power conversion route has upgraded itself from the fixed speed asynchronous induction generators to variable speed synchronous machines which are more suited to Indian wind regimes and site conditions. Over the last decade, the performance of wind farms have improved consistently as can be seen from the high technical availability of 99 per cent recorded by the new turbines.

Other areas

While the subject of renewables has been exhaustively described, there are several other areas where the Government of India is promoting sustainable development. Briefly, the major areas are as follows:

- Improving the efficiency of use in the existing installations through renovation and modernisation programmes.
- Adoption of energy efficient technologies in the supply and end use systems.
- In-building and internalising standards for environmental efficiency in the energy production and supply processes and systems.
- Rationalisation of energy pricing in order that real costs are reflected in the revenue making processes.
- Emphasis on commercialisation of clean coal technologies in electricity production with cost competitiveness.
- Progressive increase in the share of installed generating capacity in conventional hydro power plants to reach 40 per cent share for hydro by 2012.

Energy Conservation

From amongst the areas given above, details of energy conservation measures undertaken need to be mentioned since it is one of the main thrust areas of the Government. The Parliament has already enacted the Energy Conservation Act, which envisages setting up of the Bureau of Energy Efficiency. The Bureau, once it is in existence, would be responsible for the conduct of energy audit studies, labelling, publicity on energy conservation measures, etc. The Act gives statutory powers to the State and Central Governments to enforce energy efficiency measures. It has been estimated that in India, the potential for energy conservation is large and a savings of 25 to 30 per cent can be easily achieved. During 1989-1997, India's energy intensity has risen from 0.62 kg of oil equivalent per dollar GDP to 0.768 kg oil equivalent per dollar GDP, implying a 30 per cent increase when during the same time period, South Korea achieved a 40 per cent decrease in energy consumption. A study by the National Productivity Council on Industrial Policies have shown efficiency figures to be as low as 45 per cent for agro waste fuel based boilers and 65 per cent for oil boilers. A mere 10 per cent increasing efficiency would save 13.35 million metric tonne coal equivalent per year.

Apart from working on energy conservation measures in the industrial sector, adequate stress would also be given on lowering energy consumption in power stations. Energy audit studies have revealed that power stations were heavily losing due to poor condenser vacuum, non-availability of HP heaters, excessive consumption of DM water, air ingress into the boiler, high fuel gas temperatures, etc. Studies carried out by the Central Electricity Authority reveal that most of the power stations were incurring huge financial losses due to sub-optimal operations in terms of increased coal and oil consumption. Based on studies carried out at different power stations for reduction of secondary fuel oil consumption, there has been a continuous declining trend in specific secondary fuel/oil consumption at thermal power stations.

Finally, a word on environment. While all the measures described above like deriving more and more power from renewables, increasing share of hydro-thermal mix, energy conservation measures, etc. help in maintaining a clean environment, the Government of India has introduced certain measures for arresting further degradation of the environment. Some of the major measures introduced include the following:

- By 2009, all existing thermal plants will have to find ways of disposing off/utilizing the fly ash generated.
- The Government has set norms for gaseous emissions for gas based projects.
- Manufacture of clay bricks with a minimum of 25 per cent ash only permitted in the vicinity of thermal power stations.
- Lead free petrol introduced and usage made compulsory in the entire country, etc.

It is thus evident from the above the significance of the measures taken by the Government of India over the years to facilitate sustainable energy development in the country. In all these matters, successive Governments have benefited from the considered wisdom of the two Houses of Parliament. Related policy documents and various programmes and schemes in the field have been time and again discussed in the two

Houses threadbare. The Departmentally Related Standing Committee on Energy has also been providing useful inputs in the formulation of policies and programmes insofar as development of sustainable energy is concerned. All in all, the Indian Parliament has been a key component in initiating and implementing policies in the field of sustainable energy development in the country.

WATER RESOURCES IN INDIA—MEETING THE CHALLENGES OF SCARCITY AMIDST PLENTY

Arjun Charan Sethi

Introduction

In recent times, the country has had to face some of the worst natural calamities. Starting with the cyclonic storm in Orissa followed by severe droughts in seven States and flash floods in Himachal Pradesh, natural disasters, particularly flood and drought, have been endemic in India. The 'Floods and Droughts' syndrome has adversely affected the socio-economic fabric of large parts of Assam, Bihar, Orissa, Uttar Pradesh, Gujarat, Rajasthan, Tamil Nadu, Andhra Pradesh and Madhya Pradesh. The two natural calamities are different in character but both are related to water—the floods are due to excess of water while droughts are caused due to the lack of it.

Floods and droughts affect vast areas of the country, transcending State boundaries. A third of the country is drought-prone. Floods affect an average area of around 9 million hectares every year. According to the National Commission on Floods, the area susceptible to floods is around 40 million hectares. The approach to the management of drought and floods has to be coordinated and guided at the national level.

Policies and Programmes for Flood Control

Although under the constitutional arrangements, flood management and water is a State subject, the Union Government has been committed to a comprehensive policy and programmes for flood control and for the judicious use of water resources evenly throughout the length and breadth of the country. It is worth mentioning against this background that following the unprecedented flood of 1954, the then Union Minister for Planning, Irrigation and Power placed before the Parliament on 3 September 1954, two Statements, namely "Floods in India: Problems and Remedies" and "Floods in the Country". The objective, unequivocally spelt out in the Policy statement, was to rid the country of the menace of floods by containing and managing floods and thus solving the problems.

In the Supplementary Statement placed before the Parliament on 27 July 1956, the above optimistic note changed a little, stating "we shall, however, be able to curb and confine the floods more and more and do all that is possible to save ourselves from the harm and the devastation that they bring". Simultaneously, a Statement on the flood situation and flood control programme was laid before the Parliament. In this Statement, it was pointed out that absolute immunity from flood damage was not physically possible even in the distant future.

Besides these Policy Statements, some important Committees were constituted to look into the menace of floods and the measures needed to check them. These are the High Level Committee on Floods, 1957; the Ministerial Committee on Flood Control in 1964; the Ministerial Committee on Floods and Flood Relief, 1972; the Working Group on Flood Control for Five-Year Plans; and the constitution of the *Rashtriya Barh Ayog* (RBA) in 1980.

Availability of Water

It has been estimated that out of the total precipitation of around 400 million hectare metres in the country, the surface water availability is about 187 million hectare metres. Out of this, only about 50 per cent can be put to beneficial use because of topographical and other constraints. In addition, there is a ground water potential of about 43 million hectare metres. The availability of water is highly uneven in both space and time. Precipitation is confined to only about three or four months in the year and varies from 100 mm in the western parts of Rajasthan to over 10000 mm at Cherrapunji in Meghalaya. Further, water does not brook barriers or boundaries. Not merely rivers but even underground aquifers often cut across State boundaries. Water as a resource is one and indivisible: rainfall, river waters, surface ponds and lakes and ground water are all part of one system; water is a part of a larger ecological system.

Issues concerning Water Resources Projects

Although individual water resources projects are planned and implemented at the State level, they involve a number of aspects and issues such as environmental protection, rehabilitation of project-affected people and livestock, public health consequences of water impoundment, dam safety, socio-economic aspects, etc. On these matters, common approaches and guidelines are necessary. Moreover, certain problems and weaknesses have affected a large number of projects all over the country. There have been substantial time and cost overruns on projects. In some irrigation commands, problems of water-logging and soil salinity have emerged, leading to the degradation of good agricultural land. There are also complex problems of equity and social justice in regard to water distribution. The development and exploitation of the country's ground water resources also give rise to questions of judicious and scientific resource management and conservation. All these questions need to be tackled on the basis of common policies and strategies from a national perspective, without any partisan or narrow consideration. This is more imperative in a federal polity like ours.

Demands for Water

The growth process and the expansion of economic activities inevitably lead to increasing demands for water for diverse purposes: domestic, industrial, agricultural, hydro-power and thermal power, navigation, recreation, etc. So far, the principal consumptive use of water has been for irrigation. While the irrigation potential is estimated to have increased from 19.5 million hectares at the time of Independence to about 90 million hectares at the end of the Eighth Five Year Plan, further development of a substantial order is necessary if the food and fibre needs of a growing population are to be met.

Need for Efficiency in Water Utilisation

The production of foodgrains has increased from around 50 million tonnes in the fifties to about 198 million tonnes at the end of the Eighth Five-Year Plan, but this will have to be raised to around 400 million tonnes by the year 2025 A.D. This calls for irrigation facilities. In addition, drinking water needs of people and livestock have also to be met. Domestic and industrial water needs have largely been concentrated in or near the principal cities, but the demand from the rural sector is expected to increase sharply as the development programmes improve economic conditions in the rural areas. The demand for water for hydro and thermal power generation and for other industrial use is also increasing substantially. As a result, water which is already a scarce resource will become even scarcer in future. This underscores the need for utmost efficiency in water utilization and a public awareness of the importance of its conservation.

Corrective Steps to Regulate the use of Ground Water

Realising the alarming decline in the country's ground water table during the past few years owing to its indiscriminate withdrawal, it has been felt that there is a need to take corrective steps to prevent over-exploitation of ground water to ensure that this level does not fall below manageable limits, thereby causing great distress to the user communities.

It is against this background that the Government of India had, in 1971, circulated a Model Bill for regulation and control of the development of ground water to State Governments for introducing a suitable legislation. The Model Bill was subsequently revised and re-circulated in 1992 and 1996. Since then, the Ministry of Water Resources has been repeatedly requesting the States/Union territories to take urgent measures to introduce suitable legislation for regulating the use of ground water.

So far, only the States of Gujarat, Maharashtra, Tamil Nadu and Madhya Pradesh have enacted legislations for this purpose. The Governments of Goa, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Orissa, Punjab, Rajasthan and West Bengal and the Union territory of Pondicherry and Lakshadweep have informed that the bills on the lines of the Model Bill are under various stages of enactment. The Governments of Bihar, Mizoram, Sikkim and Tripura have intimated that there is no need to make legislations to regulate over-exploitation of ground water in their States.

National Water Policy

Water is one of the most crucial elements in development planning. That being so, efforts to develop, conserve, utilize and manage this important resource for sustainability have to be guided by national perspectives.

It is against this backdrop that the National Water Policy, formulated in 1987 assumes importance. The National Water Policy of 1987 *inter alia* emphasised the following:

- Basin-wise master plan for flood management in each flood-prone basin.
- Sound watershed management and catchment area treatment.
- Providing adequate flood-cushion in water storage projects, wherever feasible.
- Emphasis on measures like flood forecasting and flood plain zoning to minimize flood damage.

The Policy has also emphasised the inter-basin transfer of water. It states: "Water should be made available to water short areas by transfer from other areas, including transfers from one river basin to another, based on national perspective after taking into account requirements of the areas/basins". The National Water Policy has since been revised and updated.

Review of the National Water Policy, 1987

Some of the important areas which have been incorporated after due deliberations and discussions in the revised and updated National Water Policy, are :

- Inter-sectoral water allocations, particularly for diverse uses of water.
- Mechanism for settling the inter-State river water disputes.
- Water sharing amongst States.
- Multi-sectoral perspective and participatory approach towards resources planning and management.
- Private sector participation.
- Integration of quantity, quality and environmental aspects in water resources management.
- Resettlement and rehabilitation of project affected persons.
- Mandatory operation and maintenance funding and related policies for revenue generation.
- Reforms related to legislations, institutions, incentives/disincentives, environment and technology, etc. under the Water Resources Sector.

Accordingly, a draft updated National Water Policy (1998) was placed before the National Water Resources Council in its 4th meeting held on 7 July 2000 under the Chairmanship of the Prime Minister for consideration and adoption.

After incorporating modifications and suggestions, the draft National Water Policy was discussed further at the fifth meeting of the National Water Resources Council held under the Chairmanship of the Prime Minister, Shri Atal Bihari Vajpayee on 1 April 2002. The draft National Water Policy was finally approved by the Council Members and a reoslution was passed for adopting the same as the National Water Policy, 2002.

The revised Policy lays emphasis on integrated water resources development and management for optimal and sustainable utilization of the available surface and ground water. Creation of well-developed information system, use of traditional methods of water conservation, non-conventional methods for water utilization and demand management have been recognized as important inputs in the new Policy. It integrates quantity and quality aspects as well as environmental considerations for water through adequate institutional arrangements, including setting up of appropriate River Basin Organizations. Besides, 'ecology' has been assigned due place in the water allocation priorities. Greater emphasis has been laid on water quality aspects, which include maintaining minimum flow in the streams and treatment of effluents to acceptable standards. The involvement of beneficiaries and stakeholders in project planning and participatory approach in water resources management have been focused in the Policy. Resettlement and rehabilitation of project-affected persons, monitoring of the projects, performance improvement and private sector participation are other areas emphasized. It has also been stipulated that the States would formulate their own State Water Policy backed with operational Action Plan in a period of about two years for achieving the desired objectives.

Inter-State Water disputes

Yet another significant step to facilitate inter-State water disputes is the Inter-State Water (Amendment) Bill, 2002 which was passed by the Lok Sabha on 3 August 2001 and by the Rajya Sabha on 11 March 2002. The Act received the assent of the President on 28 March 2002. It may be noted that the Commission on Centre-State Relations (Sarkaria Commission) in its report had recommended amendments in the Inter-State Water Disputes Act, 1956. These recommendations, *inter alia,* pertain to the adjudication of the disputes by the tribunals in a time-bound manner, to provide for effective implementation of their decisions and the setting up of a data bank and information system at the national level for each river basin. These recommendations have been considered at length initially by the Sub-Committee of the Inter-State Council and then by its Standing Committee before being approved with certain modifications by the Inter-State Council. It is earnestly hoped that the Inter-State Water Disputes (Amendment) Act, 2002 will go a long way in facilitating and solving the inter-State water disputes amicably in a time-bound manner.

Conclusion

As the demand for water grows for various purposes and the ground water level is depleting very fast, the Ministry of Water Resources is poised to assume critical importance in the coming years. Concerted efforts have to be made by all concerned—not only the Union Government but also the State Governments, NGOs, International Agencies and the private sector—towards this gigantic task of nation-building in which water is of critical importance. The Indian Parliament, over the years, has been giving the benefit of its considered wisdom to policy makers and policy planners insofar as the effective management of our water resources is concerned. Needless to say, such parliamentary guidance has been a key input into the making of various policies and programmes with respect to the appropriate utilization of the country's water resources.

PARLIAMENT—MONITORING THE WORKING OF THE INDIAN RAILWAYS

Digvijay Singh

Introduction

We have adopted the system of parliamentary democracy in our country. This system emphasises the supreme authority of the Parliament and governance on the basis of the members of Parliament having been given the mandate by the people. In this set-up, Parliament is the supreme representative body and the repository of the people's will. It is the foremost duty of the Parliament to ensure that the provisions of the Constitution are fully observed. The Constitution of India and the *Rules of Procedure and Conduct of Business in Lok Sabha* prescribe elaborate procedures for monitoring the working and functioning of the Union Government.

Indian Railways : Lifeline of the Nation

The Indian Railways are the lifeline of the nation and they have been at the organisational and technological centre of many inter-related economic, political and social transformations that have produced modern India. Beginning with a short stretch of railway line from Bombay to Thane in 1853, it is about to enter its 150th year of service to the nation. Today, India has the world's largest Railways system under the single management of the Ministry of Railways having about 1.5 million employees. In 2000-2001, Indian Railways carried about 13 million passengers per day and lifted 1.4 million tonne freight traffic daily on the network spread over 63,028 route kms. The Railways function under the guidance of the Minister of Railways and are assisted by the Ministers of State for Railways. The management and formulation of policy are entrusted with the Railway Board. The Ministry of Railways is a part and parcel of the Union Government which is collectively responsible to the Parliament.

Monitoring Railways during the British Period

The issue of monitoring the performance of the Railways as a public utility has a long tradition. During the initial period, nationalist writers provided critical commentary on the Railways. In 1871, Dadabhai Naoroji made the expenditure on the Railways an important component in his analysis of how Britain was draining the wealth of India. Mahatma Gandhi described the Indian Railways as the "carriers of plague germs" and "making holy places of India unholy". On the other hand, Gokhale and others made good use of their presence on the Governor-General's Legislative Council to criticise the Railways' policies and practices as early as 1909. By the 1920s, Railways provided the subject matter for the most frequently asked questions in the Legislative Council.

Railway Budget : Separation from General Budget

Ours is a parliamentary system of Government based on the Westminster model. The Constitution has, therefore, vested the power over the purse in the hands of chosen representatives of the people, thus sanctifying the principle 'no taxation without representation'. The preparation of the Railway Budget for the approval of the Parliament is a constitutional obligation of the Ministry. The Budget of the Indian Railways is presented separately to Parliament and dealt with separately, although the receipts and expenditure of the Indian Railways form part of the Consolidated Fund of India. The separation of the Railway finance from general finance was adopted through a resolution by the Central Legislative Assembly on 20 September 1924 on the recommendation of the Ackworth Committee Report. The primary idea behind this separation was to secure stability for civil estimates by providing for an assured contribution from Railways' revenues and also to introduce flexibility in the administration of Railway finance.

Railway Budget in Parliament

The Railway Budget is presented to the Lok Sabha by the Minister of Railways. While presenting the Budget, he delivers his speech and thereafter lays on the Table the annual financial statement pertaining to the Railways, duly authenticated by him.

The discussion on the Railway Budget begins a few days after its presentation. In a democratic set-up, there are full opportunities to members to discuss the budgetary provisions and any other matters. During the course of discussion, members have the freedom to make suggestions for improving the working of the Railways all over the country. After the first stage of general discussion on both the Railways as well as the General Budget is over, the House is adjourned for a fixed period. During this period, the Demands for Grants of the Railways is considered by the

Departmentally Related Standing Committee on Railways. After the report of the Standing Committee is presented to the House, the House proceeds to the discussion and voting on Demands for Grants. The Lok Sabha has the power to assent or to refuse to give assent or even to reduce the amount of grant sought by the Railway Ministry. The combined discussion on the Railway Budget 2000-2001, Demands for Grants on Account (Railways) 2000-2001 and Supplementary Demands for Grants on Account (Railways) for 1999-2000 were taken up on 14 March 2000. As many as 150 members took part in the discussion which stretched over more than eleven hours. It shows the volume, quantum and keenness of participation of the members of Parliament in the discussions on the Railway Budget.

In post-Independence India, the Ministry of Railways became directly responsible to Parliament for policy and administration. Parliamentary business is conducted both in the Lok Sabha and in the Rajya Sabha and the functioning of the Railways comes up before the two Houses through questions, debates and discussions on the Railway Budget. The Departmentally Related Standing Committee on Railways and the Railway Convention Committee also have very important roles to play. The performance of the Railways is monitored by the Parliament through these devices and discussions on the Demands for Grants. Important and specific grievances are highlighted by cut motions. Specific aspects of the Railways' working are brought to the notice of the Railway Board along with suggestions for improvements by the members of Parliament.

Question Hour and Railways

Question Hour forms the most interesting part of parliamentary proceedings. No other business evokes as much interest among the public, the Press and the members themselves as the Question Hour. The basic objective of asking questions on Railways is to seek information about various aspects of the functioning of the Indian Railways. Parliamentary questions also make it possible for the Railway Ministry to know the grievances, problems and expectations of the people through their representatives. In a way, Question Hour is a link between the Ministry of Railways, Parliament and the people. During the Session, members ask Starred and Unstarred questions covering a wide range of working of the Railways and bring out specific problems of specific areas of the country served by the Railways. These questions relate mostly to development of backward areas, train running, introduction of new trains, speeding up of construction work, improvements in passenger amenities at stations and on the trains, review of the safety measures and so on.

Railways and Parliamentary Committees

One of the most effective methods by which Parliament monitors the performance of the Railways is through the agency of Parliamentary Committees. In a parliamentary democracy, where the Cabinet is collectively responsible to the popular House, the Committees have a co-extensive role with that of the Government. They assist the Minister in policy formulations and also in projecting a proper image of the Department. These Committees or their sub-Committees or Study Groups proceed on study tours and visits to acquaint themselves in the field of the actual conditions of the working of the Railways. During such visits, the local officers extend due courtesy to the members and ensure that they hold meaningful discussions with the Committees.

Four important Committees of the Indian Parliament exercise control over the Railways: The Estimates Committee, the Public Accounts Committee, the Railway Convention Committee and the Departmentally Related Standing Committee on Railways.

The Estimates Committee: The Estimates Committee was created in 1950. The Committee consists of not more than thirty members who are elected by the Lok Sabha every year from amongst its members. The Committee reviews the working of the Railways to ascertain whether Budgets framed by the Ministry are directed towards fulfilment of policies laid down by Government, policies implicit in the estimates and programme of future expenditure. The Committee examines witnesses, and procures information from the Ministry concerned. The Committee also makes on the spot study related to subjects under examination, goes on tour, and meets the General Managers and officers of the Zonal Railways in the field. The Ministry has to report the action taken by them on the recommendations of the Committee. The Action Taken Reports of the Committee are also presented to the House. The reports of the Committee are vigorously supported by an analysis of the facts. The reports serve the purpose of effecting economy and improving efficiency and act as a check on any wayward tendency on the part of the Ministry. The Estimates Committee goes into various aspects of the working of the Railways. The subjects which have in the past come within its surveillance cover a wide range—adequacy and punctuality of passenger train services, performance at terminal points, and indents, supply and loading of wagons for key industries, safety measures and so on.

The Public Accounts Committee: The Public Accounts Committee which is another Standing Committee of Parliament primarily performs *post* *mortem* examination of the performance of Government. The Committee is assisted by the Comptroller and Auditor General of India who prepares the Audit Report for scrutiny by the Committee. The Committee is thus aided by an expert examination done by an independent Government agency. Its duties and functions include examination of accounts showing the appropriation of sums granted by the Lok Sabha, though its functions are primarily financial examination of technical irregularities. This Committee tends to function consciously as a watchdog of Parliament to guard against official negligence and corruption. Quite often, replies on the reports of the Committee by the Ministries are not accepted by them and the Department is again compelled to review action taken.

The Railway Convention Committee: The Railway Convention Committee (RCC) is an *ad hoc* Committee constituted from time to time to review the rate of dividend which is payable by the Railway undertaking to the general revenues as well as other ancillary matters in connection with the Railway branch. RCC comprises of 18 members (12 from Lok Sabha and 6 from Rajya Sabha), who are nominated by the Speaker, Lok Sabha and the Chairman, Rajya Sabha. The Committee, once constituted, functions till the dissolution of the Lok Sabha. The Committee has a long history. Since its inception, the Railways in India faced large deficits which were borne by the General Revenues. It was only after the formation of the Railway Board in 1905 that the Railways began to yield a net surplus which became part of the General Finances of the Government of India. After World War I, the Ackworth Committee recommended that there should be a fixed contribution to the General Revenues from the Railway Finances. This was necessary to secure an assured contribution from the Railway Revenues. The RCC is entrusted with the task of reviewing the dividend payable by the Railways to the General Revenues.

Departmentally-Related Standing Committee on Railways: With the unprecedented growth of governmental activities over the years, Parliament had been finding itself somewhat handicapped in exercising fully its pivotal role of ensuring administrative and financial accountability. Enormous budgetary allocations of various Ministries were being passed by Parliament without sufficient debate for want of time. Keeping in view these drawbacks, seventeen Departmentally Related Standing Committees were set up in 1993. One of these Committees is the Committee on Railways. The Committee consists of 45 members—30 from Lok Sabha and 15 from Rajya Sabha. This Subject Committee examines the Demands for Grants of Railways and activities of the Railway Ministry and reports as to what economies, improvements in organisation, efficiency or administrative reforms consistent with the policy approved by Parliament might be effected. Apart from other functions, the Committee examines the Annual Report and Plan Projects/activities of the Railways. The report of this Standing Committee is of persuasive nature.

Consultative Committee on Railways: The Minister for Railways is Chairman of the Consultative Committee on Railways and its meeting is attended by members of the Railway Board as well as high officials. The Committee draws its own agenda concerning Railway matters. Members from both Houses of Parliament are nominated on the Consultative Committees by the Minister of Parliamentary Affairs. The maximum membership of a Consultative Committee is 40. The meeting of the Consultative Committee on Railways takes place during inter-Session period. It provides a forum for informal discussion among members, Ministers and senior officers on the problems and policies of the Ministry of Railways.

There are also Consultative Committees for the Railway Zones. These Committees continue to be known as "Informal Consultative Committees". A member of Parliament is nominated on the Informal Consultative Committee of the Railway Zone in which his constituency falls. These Committees provide a forum for informal discussion among the members, Ministers and senior officers of the Railways on problems, policies and the working of the Railways in a manner which is not practicable on the floor of the House.

The Railway Ministry stands to gain considerably by parliamentary control exercised through the Committees. On the floor of the House, the Railway Minister does not have the time and assistance to spell out and discuss in detail the problems faced by the Ministry; discussions in the Committees enable the Government to benefit from the suggestions and recommendations of the members of Parliament. On its part, the Ministry of Railways deals with all work relating to Parliamentary Committees and Parliament in general on a priority basis.

The smooth functioning of the Railways, over the years, particularly during the post-Independence era, shows that the role of the Parliament has been quite effective and meaningful in monitoring the performance of the Railways as a public utility.

GLOBAL PEACE AND DEVELOPMENT—ROLE OF PARLIAMENTARIANS IN FORGING CLOSER POLITICAL, SOCIAL AND ECONOMIC TIES AMONG PEOPLE

Yashwant Sinha

Parliamentary Democracy in India

Parliamentary democracy in India has withstood the test of time. Over the last fifty years, the country has faced numerous challenges, hardships and obstacles in the smooth functioning of its polity, economy and democracy. However, on each occasion, the people of India have rallied together to overcome the difficulties. Our Parliament, which represents the voice, aspirations and expressions of our people, has reflected the resilience and courage of this nation on all occasions of crisis.

A journey spanning fifty years is not a short journey. Over this long and significant period, the Indian Parliament has developed a character of its own. This character stems from the unique features of the people of this great country and symbolizes the multifarious, diverse and yet harmonically synthesized bonding shared by the people of our country.

Being a parliamentarian in the world's largest democracy is a rare honour and privilege. It is also an enormous responsibility. Since Parliament is the assembly of peoples' representatives and the highest democratic forum of the country, it is essential for all the representatives to reflect the views, opinions and concerns of the sections of the society that they represent. Doing so effectively is a challenge for the individual's intellectual, political and communicating abilities.

Role of Parliamentarians : The Emerging Dimensions

From my association with the Indian Parliament, I have no hesitation in admitting that the responsibility of the parliamentarian goes far beyond the narrow confines of his political identity and ordinary legislative business. The parliamentarian is the vehicle that transports the spirit of the country's vision to the common people of the country. He is the common link between the Legislature and the masses. He is committed to carrying the ideas, policies and issues that are debated by the country's highest decision-making authority to the people who are the eventual subjects of all parliamentary discussions.

This unique role of the parliamentarians in communicating to the people the thoughts and ideas that go into the formulation of policies and their implementation assumes significant dimension in the light of the contemporaneous developments that have taken place in our social, political and economic lives. Both internationally and in the domestic sphere of our lives, uncertainty, tension and anxieties have marked the recent months. The international community, as well as our own country, is trying hard to cope with the pressures of the prevailing difficulties.

I would refer to some of the events that have shaken the world and our country in recent times. In the light of these events, I would like to put forward my perceptions of the role of parliamentarians in cementing closer ties among peoples.

The first event that I would like to recapitulate is the heinous attack on the United States of America on 11 September 2001. The attacks exposed the vulnerability of modern society and civilization to the threats of organized terrorist activities. The world was barely coming to terms with the enormous dimensions of the tragedy, when, only two months later, the terrorists attacked the Indian Parliament on 13 December 2001. These two barbaric acts in quick succession were a rude reminder to the world about the extent by which terror networks had penetrated the rubric of our daily lives. No words are strong enough for denouncing these cowardly acts of violence. But what we must remember and rise against is the spread of terrorism that threatens to affect even the basic premises of our daily existence.

These events have provided the parliamentarians, not only in our country, but also in every Legislature of the world, opportunities for rising to the occasion. It is important for parliamentarians to spread the message of resoluteness, courage and resistance against terrorism to all the communities, fraternities and sections that they represent. This is particularly true for a vast and varied country like India, where people located at various corners of the country are separated by large distances. Despite the unprecedented growth of the media in connecting people, there are large segments of the country, where the print and the audio-visual media have only negligible presence. In these instances, the best way of communicating messages of vital national importance are through individuals whom the people trust, depend upon and perceive as their own. And who can be better in this respect than the individuals whom the people themselves have sent to the Parliament as their elected representatives?

I would now like to refer to another significant issue that pertains to the world economy. For nearly two years now, the world economy is suffering from a slowdown. The depressed conditions of the world economy were further worsened by the terrorist attacks on the US. We have also been feeling the effects of an internal slowdown in our economy for quite some time. In some ways, our present condition is linked to what is happening in the rest of the world. And this is because of the deepening and strengthening of the process of globalisation. Today, India is not an isolated entity. Our fortunes and performances are linked to the developments taking place in the rest of the world. This linkage with the greater global economy is not only true for India; it is true for all countries and economies in the modern world.

Contribution of Parliamentarians : Towards a Brighter Future

By referring to the global developments and the similarity of situations between the world and us, I wish to emphasize the importance of appreciating the emergence of a global community and family. The world has become more close-knit and interdependent. Prosperity of nations cannot be looked at in isolation any longer; nor can their difficulties be addressed without taking stock of the global dimensions. I have referred to the threats of terrorism. The fact that both the United States of America and India have been affected by the menace shows that it is not a local phenomenon. It is a global problem and the whole world has to come together in fighting this evil.

We all have to realise the fundamental truth that we are now living in a tighter and more homogeneous world. This truth has to reach the people at all levels. The importance of parliamentarians in delivering this message can hardly be exaggerated. Their role becomes all the more significant in countries which are poor and suffer from problems of low literacy, deprivation of basic needs and social rigidities. In these countries, common people are often at a loss to realise the reasons for which their Governments take certain decisions. Over a time, their sense of loss increases leading to mounting grievances and popular discontent. This vulnerability is more for those countries that are attempting to significantly deviate from the paths of growth and development which they had followed earlier. In these nations, there are instances of social discontent against the policies adopted by the State, which are essentially manifestations of lack of proper perceptions and insights into the reasons that lead to the creation of policies.

As a parliamentarian from the world's most populous democracy, I feel it is essential for all of us who represent the people to transgress the limitations of political colour and reach out to the people for spreading the truths and principles that are essential knowledge for all citizens of modern democratic societies. We have a responsibility towards the people who have made us what we are.

With regard to India in particular, we have an even greater responsibility given the challenges that are facing us. We should join hands in creating a common platform that would pledge to promote greater awareness among the people regarding the world in which we live, the constraints that face us and the ways in which the difficulties can be overcome. This is perhaps the best tribute that we can pay to the legacy of parliamentary democracy in our country on the occasion of its Golden Jubilee celebrations.

One very important and significant contribution that the parliamentarians can make towards further reinforcement of democratic ideals is by way of gearing themselves effectively to combat poverty. Poverty reduction is one of our core developmental objectives. Moreover, all over the world, poverty reduction has been recognised as the overarching objective in the developmental process. This assumes all the more significance because the entire population of the country is to be involved in the developmental process and we cannot afford to overlook the interests of the large majority of poor people while embarking on the developmental process. This is precisely where we need to lay equal emphasis on economic and political democracy.

The combination of economic and political democracy, and the astute management of that combination by parliamentarians, acquires greater significance in the light of the on-going process of globalisation. Globalisation is rapidly bridging the economic distance between nation states by facilitating instantaneous transfer of ideas, knowledge and information. The process is gathering momentum through the adoption of policies that intend to stimulate expansion of trade and investment across borders. Unfortunately, globalisation, and the accompanying policies, have often been wrongly interpreted by various quarters. It is here that the parliamentarians have a crucial role to play. The rationale behind the far-reaching economic changes effected by nation states might not always be comprehensible for their domestic constituencies. It is upto the parliamentarians to bridge the chasm in this regard by conveying the logic and sense behind the actions to the common people.

The economic restructuring currently going on in the developing countries requires active involvement of the parliamentarians. In recent times, staging of demonstrations and protests by different groups at various international fora has captured the attention of the international community. There is definitely a difficult side to economic transformation, which requires considerable policy attention. But what is not often clear is whether the protestors do actually represent the grievances of the larger section of the common people or not. Ideally, the parliamentarians, being the true democratic representatives of the people, should be the most competent authorities for bringing to light the dissatisfaction of the common people. A more proactive role by the parliamentarians in interpreting and analysing the process of economic restructuring is, therefore, all the more desirable.

Let me refer briefly to the economic restructuring in India in this context. We have moved on to the second generation of economic reforms in our country, after successfully implementing the first stage in the last decade. It is essential to realise the vital differences between the two sets of reforms. The second stage reforms, particularly those relating to labour market, agriculture and the food economy, require evolution of consensus among the various States of the Indian federation. They are also essentially legislative in nature and call for amendments of various existing regulations. Parliament has the final say in the implementation of these reforms. Therefore, it is essential for parliamentarians to not only carefully review the suggested economic changes, but also to play an active part in building the social and political consensus required for expeditious implementation of the reforms.

I also feel that the parliamentarians can play an important role in encouraging more investment in social sectors like health, education, women's empowerment, environment, etc. This would help the national effort towards the removal of poverty and attaining the goal of sustainable development. Investment in education and health are important in tackling the problem of illiteracy and improving the health standards of our people. This is important in a country like India as we have a long way to go in terms of human development. Parliamentarians with their wide accessibility and rich experience can suggest ways and means to attain a better human development index for the country so that we can steadfastly progress towards a vibrant and stronger India with high productivity and rich manpower resources.

I would also like to emphasize the invaluable contribution parliamentarians can make in fighting many of the social evils like dowry, caste violence, parochialism, communal disharmony, discrimination and violence against women, corruption, etc. that are eating into the vitals of our national life. If parliamentarians succeed in developing a strong popular movement against these social evils, then we can concentrate on our task of economic development and poverty reduction in a focused manner. Parliamentarians can also dispel gloom, blind faith and despair by developing scientific temper and encouraging rational thinking.

Another area where parliamentarians can play an important role is in developing a sense of national pride and unity. We should take immense pride in our rich cultural heritage and the history of our freedom struggle. This will give us the inner strength and stimulus for vigorous and whole-hearted effort towards accelerating national reconstruction and development. The economic history of many modern day super powers clearly testify that their remarkable social and economic advancement was greatly facilitated by their patriotic fervour and strong national sentiment.

In the ultimate analysis, I would like to say that the teeming millions of the country find their voice through parliamentarians who happen to be the most important vehicle for translating the wishes and aspirations of the vast majority of their countrymen spread across the length and breadth of the nation. Their duty multiplies at the present juncture when the country is engaged in building a strong, vibrant and prosperous India with the earnest objective of ensuring greater socio-economic well-being for all sections of the society. Our parliamentarians should try to explain to the people in their language the meaning and import of the economic reform process and how it would be beneficial and useful to the common and poor people. This is so because times have changed and globalisation has come to stay. We must surge forward. But in a parliamentary democracy, we need to move ahead with the fullest involvement of our people. In this task, parliamentarians have a very active role to play. Market mechanism is not always perfect. Quite admittedly, there can be market failures. We have to guard against such failures. We have to think about effective social safety nets so that our people do not suffer because of them. But let us not be prophets of doom. Let us look to the future with hope. Let us not suffer from a fixed mind-set. Let us be open to change. I feel that parliamentarians can effectively play this complex but important role of conveying the right type of developmental message to the people so that people can appreciate the overall situation and assess the performance of the country, especially on the economic and social fronts, in the right perspective.

EMERGING INSTITUTIONS AND ORGANISATIONS— SOME ASPECTS OF SUSTAINABLE RURAL DEVELOPMENT

Y.K. Alagh*

Introduction

The need for faster rural development is self-evident. This objective can be achieved only by radical institutional changes. Equally urgent is the need for streamlining procedures and rules to remove rural backwardness.

Diversification : An Asian Problem

Faster agricultural growth and diversification are seen as the key to sustained development in a trade dominated scenario not only in India, but also on a global plane. Recently, Asian countries met on the invitation of the FAO Regional Chief for Asia, Dr. R.B. Singh to prepare for the global meeting in Italy to review progress on the commitment the world had made five years ago to halve hunger by 2015. As the Pakistani bureaucrat expert, Akhtar Hussain Randhawa kept on highlighting, production of grain is not the problem, since India was sitting on a mountain of grain. Even then, there was conclusive evidence of millions of hungry people. In fact, studies by the International Food Policy Research Institute quoted by the Asian Development Bank suggest that malnourished children of age five years or below in rural India are now placed at 250 million. The only rural area in Asia where this number is marginally exceeded is rural China, where malnourished children are placed at 266 million. China and India are large countries and so the absolute numbers are large, but substantial numbers are undernourished in the rest of South Asia and also countries like Thailand, Indonesia, Malaysia and the Philippines. These are also all countries with a demonstrated capacity to grow grain. Crop production growth was 2.8 per cent annual in the period 1967 to 1997, way ahead of the population growth rate in South Asia and

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* This is a slightly edited version of the Moonis Raza Memorial Lecture delivered by Prof. Yoginder K. Alagh at the Jawaharlal Nehru University, New Delhi, on 1 February 2002. This has been reproduced with the permission of Prof. Alagh.

3.6 per cent annual in East Asia. Asians were consuming an average of 2053 kilo calories per person per day in 1964 to 1966. This went up to 2600 in 1999/2000, but a large part of the world's hungry are still there, in Asia (*See* ADB, 2000).

The issue is not grain but access. You need money to buy food, even if your farmers produce it and your shops have it. You need agricultural growth, not to grow grain, but to create a source of income on a widespread basis. When a large number of people live in rural areas, only widespread agricultural growth can trigger broadbased rural growth and this is the only way of reducing hunger. The State can feed a few people and it must do so. The really starving are the destitute—women headed households, disabled wage earners, the destitute old. They have to be given grain. You have to give the poor girl child a free lunch to keep her in school and the poor pregnant or lactating mother needs assistance. There are also sharply defined geographical pockets of starvation placed there by the atrocities of man on nature and the environment. But these are targeted areas or peoples like the KBK districts of Western Orissa. But on a mass scale, no Government can do the task and you have to grow so that there is work and then money in their pockets, so they buy food.

The failure of the last decade in Asia is the inability to trigger this growth on a regionally widespread basis. Inequality has gone up. The Malaysian economist of Indo-Ghanian origin, Jomo K. Sundaram shows that apart from India where inequality is roughly constant, the measure of inequality, the so-called Gini coefficient, has gone up from around 0.33 or 0.38 to around 0.45 and more in most countries and also in China. The good life was announced too soon. India is not unequal, but it has not grown as fast as East Asia, so for one or the other bad reason, hunger remains in Asia.

Paradoxically, to grow on a widespread basis, grain growth will slow down more than in the past. In fact, livestock production grew by 4.3 per cent in South Asia and generally the pattern is that non-grain crops grow faster than grain crops, and animal husbandry and fish even faster. Diversification is the name of the game and incomes grow fast in response to demand changes only this way. But it is not happening fast enough. We need investment in land and water and as the Bangkok Declaration says, there is synergy in land and water investment when it is made together. We need reform and investment in rural infrastructure. This reform is more difficult. For it runs into problems, because the rural economy is complex and shows and sloganeer up to be the philistine that he is. At that stage the rugged champions of priority and reform are not there. So irrigation growth in 13 major countries of Asia has gone down according to FAOSTAT from 2.05 per cent annual in the period 1967/82 to 1.56 per cent from 1982 to 1995. The only two of the thirteen in which the deacceleration is not there are the blessed Bangladeshis and Myanmar. The problem we are discussing has a global dimension. (Table 1).

Table 1

Irrigated Area: Share and Growth

1967/1995

Sl. No	Country	Share of Agricultural Area Irrigated %		Growth of Irrigated Area % annual	
		1970	1995	1967/82	1982/95
1.	Bangladesh	11.63	37.56	4.95	5.39
2.	China	37.18	37.02	1.59	0.79
3.	India	18.44	31.82	2.64	2.42
4.	Indonesia	15.00	15.18	0.65	0.49
5.	Korea Rep.	51.52	60.76	0.73	–0.65
6.	Malaysia	5.91	4.47	2.34	0.22
7.	Myanmar	8.04	15.38	1.87	3.37
8.	Nepal	5.91	29.82	12.55	2.67
9.	Pakistan	66.99	79.63	1.39	0.89
10.	Philippines	11.88	16.60	3.80	1.33
11.	Sri Lanka	24.55	29.16	1.91	0.21
12.	Thailand	14.19	22.70	4.23	2.78
13.	Vietnam	15.95	29.60	3.71	1.29
	Total	25.17	33.24	2.05	1.56

Will India Diversify?

Some experts say that India is not changing and is stagnating. They say that the country was changing fast in the eighties and is not doing so now. Incidentally, in the eighties they argued the same way. India, they said then, was stagnating. Now it is true that the rate of change is slower in the nineties, but the historical process of change is there and until recently, the economy was also growing fast. For example, it is no longer true that 74 per cent of the work force depends on agriculture. In fact, even in 1961, while 75.9 per cent of the work force was dependent on agriculture, only 73.5 per cent was depending on crop production. This has now gone down to 54.3 per cent according to the National Sample Survey's 55th Round (Table 2). However, we keep on saying two-thirds, sometimes three-fourths, of our people depend on agriculture. There may be some change in the census numbers when they come, but that will not change the big picture. While only 54 per cent workers are engaged in crops those in livestock, dairying, poultry and so on has doubled, from 2 per cent to 4 per cent of the work force. As people are better off, they eat more eggs, drink more milk and eat vegetable, fruit and cheese. As India grows faster, grains grow a little more than 2 per cent annual, edible oil, sugar, cotton and milk at around 5 per cent annual and poultry and fish at 6 to 7 per cent plus. This has happened in the nineties and by now this diversification of the food basket is well known; also that it takes place at all income levels, apart from the lowest decile.

The same principles apply to forest and fish. But first workers depending on "logging, forestry and fishing". This was 0.5 per cent of the work force in 1961 and is stuck at 0.6 per cent in 1999/2000. Workers in forestry have gone down, those in fishing have gone up and their combined total remains the same. Thereby hangs a tale. Demand for forestry products is going up, like everything else. In fact, we are avid readers of newspapers and the demand for newsprint is exploding, also wood and all the other nice things tree crops produce, like, curry *patta*, resins, medicinal plants and many other wonders.

The ban on logging is absolutely necessary, but the forests should be nurtured to produce everything else. This is not happening and we are becoming one of the largest importers of forest products, while many other countries are large exporters, say of medicinal plants, organic chemicals of forest origin and so on. These are all on OGL. Import duties in many cases are 10 to 15 per cent. The first thing to do is to clean up the tax system so that forest produce, particularly what is called minor forest produce, is not discriminated against. Apple trees get protection at 60 per cent, some trees at 40 per cent, but most at 10 per cent. No one knows why. The second thing is to do a market reform and let producer and joint forestry management committees enter into contracts with those who can sell. The third thing is to clean up the financing and technology support systems. Today a tribal who grows a tree on his own land cannot get financial accommodation for the sixth year, if he has seen the tree through five years with his own savings. If we get into the business of nurturing our forests, the sector will lead the next agricultural revolution. Poultry and dairying grew at 5 to 7 per cent annual. Forest produce demand is growing at that rate. But production growth is zero, all because of perverse policies. Now that we have Chhattisgarh and Uttaranchal, I hope, we will get our act together.

Fish is a strange story. It was growing fast at around 7 per cent annual. Local demand was growing and exports were doing well. The eastern region in the country was doing well in fish too, first in inland fishing and more gradually in the deep sea where Kerala, Maharashtra, Gujarat and Andhra Pradesh held sway. And then in the mid-nineties, it all stopped. No one really knows why. We do know that East Asia was our dynamic market and when they melted down, one part of the fast growing market crashed out. As dairying, fish, poultry and forest produce become more important, knowledge about them is going to be needed. Support to diversification through financial backup and trade augmenting policies is the key.

Table 2

Agricultural Work Force

Sector	% of work force depending on sector		
	1961	1993/94	1999/2000
Crop Production	73.5	58.1	54.3
Livestock	2.0	4.5	4.1
Forestry and Fishing	0.5	0.7	0.5

Source: Census and NSSO

WTO

It takes us time to implement decisions. Delay can be costly in a globalising economy. Quite sometime ago, there was the decision at the WTO Conference of Chief Ministers to mandate an empowered group to work out a crop diversification programme for each agro-climatic region. This has a number of advantages. Preparation for a specialised agriculture which can import substitute efficiently and also produce for export, would begin in practice, rather than in globalisation slogans. It would also bring out the inherent strengths of India's farming communities, as also highlight how the problems lie elsewhere, outside the agricultural sector, in banking practices, weak support systems, misguided subsidies, businessmen and traders intent on making a fast buck and laws which let them do so.

Policy groups with experience and knowledge must spell out concrete new strategies for land and water development, marketing and processing infrastructure and better and cheaper inputs, and lay down economic rules to buttress the new order. It is time to lay down that policy frameworks and we must not confuse the past, the present and the future in muddled alternatives.

First the past. The gains from trade reform were low, both in India and abroad in the agricultural sector. The empirical models of scholars like Engco and the collapse of world demand for agriculture after the East Asian meltdown with initial negative and then very low growth is well known, of course only outside India, our debates being knowledge proof. In the first half of the nineties, India's agricultural export growth was robust, 12 per cent annual in dollar terms, but since almost 40 per cent of her demand was in East Asia, the crisis there put paid to this first upsurge. In spite of all this, in some regions and some crops, exports provided the cutting edge. They were also the impulse behind technological change in crops like castor, some spices and durhams, as also activities like poultry and meat. World agricultural demand declined for sometime after the East Asian crisis, then rose slowly and may now pick up. It is time to get back to the fast track and also to internalise that in world markets, one must respond to fluctuations.

In the present, apart from planning with better policies, the coordination between the Centre, the States and financial institutions must become an institutionalised feature of the policy regime. The meeting of the Chief Ministers is needed. There also must be complete transparency and data sharing to facilitate this. It is good that the Commerce Ministry has put its submissions and results of negotiations on its website. This is a great improvement from the events before we signed the GATT agreement at Marrakech. It is not good to give tables to the nation on so called "low" agricultural imports, in which the largest imported commodity, *i.e.*, cotton is kept out. Cotton is one of India's largest crops, affects millions of farmers, is a high cash input, risky game. Some of the highest imports, around 20 per cent of domestic consumption, have been in the last two years and domestic stocks of unsold cotton are going up. There are also commodities like spices, horticultural crops and even "other" oilseeds, where imports are not large enough to show up in the national basket, but can create tremendous adjustment problems for a set of districts. We cannot get scared of this, since trade means imports also, but we have to prepare ourselves to minimize the damage and this needs quick assessments of facts. Countries all over the world do it and so must we.

There is another reason for both coordination and quick, flexible knowledge-based responses. No one agency or Ministry carries the sole burden any more. Tariffs, taxes, bank financing, pricing and purchase and technology policies all need harmonisation. Take cotton. In those regions where better seeds and pesticides have been marketed and used and ginning is modernised, the problem is less, because the mills get purer stuff. But there is also the problem of a low tariff rate in a commodity, where our competitors abroad like China, Philippines and Egypt subsidize. We are nowhere near a coordinated policy framework for this crop. The problem is more complex, because policy for a single crop needs to take competing crops into account. Instead of cotton, the farmer can grow rice or an oilseed. So the policies on those crops are equally important in determining the outcomes.

And now the future. The first thing to accept is that the rules of the past are up for negotiation. It will not do to take the past rules and keep up saying that we are safe. At present, the big boys are fighting it out in terms of Europe, North America, Japan and the CAIRNS group. After they come to an understanding, the Third World will be under pressure to fall in line. The base year for subsidies, the numbers on AMS, etc. will all then come under scrutiny and the negotiating table. The Brettonwoods institutions are all giving us new estimates and formulas. We have to work within the negotiated framework and structure our policies in the context of sustainable agricultural growth, to realise that benign land and water policies and cropping sequences generate income, but are also trade friendly. Also only in this context can we eliminate hunger and reconcile food security with developmental concerns. Bad subsidies have to be given up and an Adjustment Programme of around two and a half billion dollars built up for the green box and WTO compatible policies.

Operationalising Policies

At the operating level, we must appreciate that:

- a land and water development strategy is a precondition for faster agricultural and rural growth. This can emerge from community organisations and by strengthening existing best practices. This, in turn, depends on financial and economic policies of the central bank and the Finance Ministry;
- declining profitability in Indian agricultural needs alternative channels of input supply and output processing for reducing the farmer's cost and improving his returns and this again needs wide based strategies of strengthening the farmer's own

organisations since the private sector has not met these needs in a period in which there was substantial withdrawal of the State from these sectors. Examples from sectors like sugar, cotton and fish show this.

These imperatives are very pressing on account of the challenge of adjustment to the WTO and, in fact, should be the basis of the next Budget.

Water and Infrastructure

The nineties saw a sharp fall in the expansion of minor irrigation as a source of growth in the country. That is the need for the reintroduction of the minor irrigation and tubewell irrigation programme in the country. A programme for the improvement of delivery systems and for watershed development of a much larger type is also needed.

The second major initiative required here is a much larger scheme of institutional credit for different kinds of minor irrigation initiatives and market infrastructure creation. The agroclimatic programme has all the details worked out but funding for these highly viable schemes is not there in the different sub regions. Deepening of ponds, tubewells, rural roads and market centers have all been identified and investments in the eighties were giving high returns. The impact of the Agricultural Rural Debt Relief Act of 1991 which wrote off loans and broke the back of the rural credit system in the cooperative sector still has not been reversed. The return flow of credit has not started. The projects examined have varied considerably. Watershed development, reclamation of saline lands, aquifier management in difficult situations like coastal aquifiers, tribal irrigation cooperatives, tank irrigation have all been reported as success stories and studied. The question is replicability on a larger scale. (*See* Alagh, 1992, 2000 and Chopra and Kadekodi). We try to set out some rules, which, if applied in functioning policies, may reverse the tide:

- The success stories are community and leadership based, with leadership coming from diverse sources—a progressive farmer, an NGO, a local retired army person, a 'concerned' civil servant, a scientist working in the field. The leaders either had a science background or knew enough to adapt from a nearby science institution. The organisation structure was neither purely private ownership, nor fully community or social control. The leadership invariably argued for aggressively functioning markets, and land ownership was private and agricultural operations at the household level. However, there was for land or water management, limited and well defined cooperation. This could be drainage, soil shaping contour management, improvement and management of lower-level canals, desilting of tanks, raising embankments, fish culture, market development, controlled grazing and so on. They estimated the land and water development costs, the labour component, 'outside finance', the output in terms of food requirements met, energy requirements met and fodder supplies. There were estimates of 'economic rates of return on the investment', *i.e.* at accounting border prices, with a shadow wage rate 25 per cent higher than the market rate. Financial rates of return at market prices were also estimated. These studies showed high economic rates of return, 18 per cent plus, making them very productive investments.

- There have to be well identified shelfs of a larger number of small projects on land, water and other infrastructure projects available for financing. It was a mistake to weaken the agroclimatic project in Western India, given the region's diversified resource base.

- Financial institutions have to design structures such that community collateral is possible for viable projects. Self help financing groups are only one such group. Land and water development groups, local infrastructure projects, in road or communication sectors, productionising products developed in R&D institutions, training for production with improved techniques, market development schemes developed by local and community groups would be other examples.

- Lending through a weather or project cycle would be necessary. NABARD had started a scheme of this kind in 1991 as part of an agro-economic regionalisation strategy, gave it up in 1993 and is again starting it now. (*See* Kapur Committee, Reserve Bank of India, 2000 for details.)

- Developing policy "champions" for sorting out administrative, financial and procedural issues at local, regional and national levels, when problems arise with these kind of development strategies. It is reasonably certain that problems are going to arise in development experiments which are off the beaten track. The question then is, is there somebody in the policy decision making structure who will sort out the problem? ADB reports in a detailed study of farmer managed irrigation systems that the failure cases were those where such support did not exist. Failure

> here is defined as performance levels in water delivery lower than by Government agencies. Unfortunately, no one is championing such rural development right now.

The Planning Commission has shown in the mid-term review of the Plan that the agricultural growth rate has gone down in the nineties in a decisive manner as compared to earlier decades. This should have led to some introspection. Instead, we are being told to do more of the same, namely, let the State and community organisations withdraw. Let the process of globalisation be complete. But public investment in agriculture has gone down in a big way. Exchange control is no longer there. Public sector input supplying agencies have withered away in areas like seeds, pesticides, credit and fertilisers. Controls on trade, investment and output are much less. Why is output growth less, then, in spite of excellent weather, and why is the agricultural investment rate going down?

A basic feature of the agricultural economy of which no one is talking about is the fact that according to the detailed cost of cultivation studies analysed by the Commission on Agricultural Costs and Prices, the relative increase in input prices is much higher than in the past and is not compensated by productivity increases. Since output prices are not rising fast enough, agricultural profitability rates are going down. (*See* CACP 2000). Available data shows that profitability rates in Indian agriculture have fallen by 15 per cent in the nineties. In a market driven agriculture, this would have serious consequences and drive away investment to other sectors. It would also cause misery in the sector. Now this is a fairly serious matter. In the nineties, when the role of the private sector expanded very considerably in supply of seeds, agrochemicals and credit, input prices went up in a significant manner and in a relative sense. Of course, with this structure growth would go down. Also, as the Planning Commission points out, agricultural growth has also gone down because of a collapse of public investment. So we have both diminishing returns and cost push declines in profitability in a period of substantial privatisation of agriculture. While the constraints on diversification in relation to domestic demand and exports can be explained by the structure of price support in India, the rise in input prices and falling profitability can only be explained by inefficiency in the working of the market. The case for reform in the State sponsored pricing system to encourage diversification of Indian agriculture is very clear. So is the need to remove bureaucratic controls of commodity movements in India and for exports. But the effectiveness of large companies in supplying cheaper inputs in village markets of small size needs study. Their presence is necessary. Is it sufficient?

Now that we have negotiated a vantage position for ourselves, the important issue is to prepare both for the negotiations in detail and for the actual trade that would follow. As the Government said, we gave up a little in the environment area, for advantages in agriculture. I would in fact put it more positively. To use an expression by Gary Sampson, who has written extensively on the WTO, we have introduced the concept of development in the WTO discussions on an operative level; we should, therefore, now be able to steer the environment and trade discussions to our advantage. This should most certainly be true for the agriculture sector.

Earlier, when the details of the discussion in the US and the EU were coming out, it was clear that the bureaucrats' pressure would be on us to reduce support to agriculture, when the negotiations begin seriously, which for us will be after Doha. Economists, bureaucrats and others who said this would not happen should look at the Chinese experience. China has the same arguments. They do not accept the estimates of subsidies the WTO uses since their budgets use different concepts from those used, for example by the IMF for Government expenditure. The Chinese State Planning Commission has made this clear as late as November but China has accepted the negotiating position that subsidies to agriculture, currently estimated for WTO purposes at 10 per cent of agricultural GDP, will be brought down to 8.5 per cent although the pressure was to reduce them to 5 per cent. In India's case the clauses on food security, livelihood security and sustainable rural development will enable her to save that part of the policy system which is worth saving. This is a big gain.

A number of our policies are not worth saving and that is our problem, but we have the space and the time in which we can reform ourselves and that is important. Subsidies to crops which are out of sync with demand both at home and abroad cannot be through procurement because we build up unwanted commodity mountains that way.

The real policy options then are to build markets, develop information systems of the economic opportunities available, provide financial institutions which work and provide finances for communication, processing, standardization, quality upgradation and trade. Diversification is in any case not possible if the farmer does not have access to improved energy and water supplies. However, it becomes much easier if the land development technologies are accessible. It is well known that the farmer pays for such facilities when the service is good. All of this means a great initiative to release the Indian farmer's energies by improving his access to inputs and services. It means market driven input supplies. This means that a number of organizations which cannot cover the last mile have to close down and this becomes difficult when they live on Government subsidies and many others who need to have access at least to bank finance. Cooperatives of the type we are pleading for have to be put in the driver's seat. The Rural Infrastructure Fund was meant to do this. But somewhere along the line, it became a vehicle to finance the official irrigation plan. We have to revive it or develop a new vehicle to power the Indian farmer and his organisations to diversify, trade and improve his income. All of that will now be WTO compatible. After Doha, the main challenge is at home. The road map abroad is no longer hazy. Again we have in the nineties agreed to very low tariff bounds for forest products, fruits, vegetables, dairy products, juices, medicinal plants and all the products from which the *kisan* can make money. This is tragic and needs immediate reversal at the policy level.

A growing and diversified agriculture holds the key to Indian development. A massive programme for land and water development has to be the centre piece. It must be led by a public initiative, with a very large financing component. Newer institutional forms like cooperatives, NGOs, non-profit companies and others must be designed. The new technologies in cereals like the *bajra* which can store, and paddy, including the hybrids, must get off the research success stage. Shorter duration cereals will pave the way for diversification to oilseeds, pulses, fruits and vegetables. Markets and their development and processing are the key. Strategic alliances must be encouraged.

Trees and forests will lead the next stage of sustainable development. Biotechnology will help here and the so-called minor forest produce will be the key. Economic reforms, including tariff rates for a level playing field, and financial reforms, particularly of the banking sector, will lead these developments. Fish is the other major sector which must regain its place as another leading sector. At the centre has to be the *kisan* and his organisations and the *kisan* is many times a woman and *She* will lead the next revolution. But above all, we need a political and policy commitment to the objective of widespread agricultural and rural growth.

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DEMOCRACY AND DEVELOPMENT— ALLIES OR ADVERSARIES?

Sharad Pawar

Introduction

Man has followed varied paths in his attempt to organise civil society. From amongst numerous concepts and practices, 'democracy and development' has gradually evolved over the ages and come to be accepted as the preferred model of governance. In its classical form, democracy was practised in the ancient Greek City States in the fifth and fourth century B.C., but the modern democratic States of the 21st century have undergone substantial changes to cope with the needs of the time. Alongside the evolution of democracy as a system of governance, 'development', as a concept and strategy encompassing both social and economic dimensions, has also come to occupy the centre stage of societal management. The objective, the direction and priorities of development have been determined over the ages largely by the nature of the State system. It has been historically seen that while the authoritarian States have directed development to prestige projects, the oligarchic States have benefited the ruling aristocracy, and the democratic States have planned developmental efforts for the benefit of the common people.

Evolution of Democracy

Democracy as a form of Government has caught the attention of the world, especially during the last two centuries. Democratic principles were made famous by the call of the French Revolution that 'all political authority stems from the people'. The American War of Independence, the signing of the Magna Carta, the end of colonialism, etc. are historical events which acted as catalysts in this direction. The collapse of the authoritarian States during the two World Wars and later the collapse of the Communist System in the erstwhile Soviet Union and the countries of Eastern Europe were also important events facilitating the onward march of democracy.

Attributes of Democracy

Democracy, as a nature of Government, basically implies two broad principles, *i.e.* popular control over collective decision-making and equal right in the exercise of this control. The degree of realising these principles in the decision-making in the State or society determines its democratic nature. While inherent democratic values in a society greatly strengthen democratic governance, what is most crucial is the existence of a democratic State apparatus. Conventionally, a Government is called democratic when it is accountable to the people through competitive election to public office, where there is adult suffrage and equal right to vote and to stand for election, and where civil and political rights are legally guaranteed. Democracy relies on open debate, persuasion and compromise, at the same time guaranteeing basic freedom of the people.

Democracy facilitates societal renewal by providing for routine and peaceful change of policies and political leadership that have outlived their usefulness. Democratic systems are able to ensure societal and generational renewal without the massive upheaval or governmental disruptions that accompany the removal of key personnel in non-democratic regimes.

Development Paradigms

Development is a broader concept than increase in income. It is generally recognised today that development cannot be treated as a clearly quantitative concept to be measured by traditional indicators such as by GNP per head of population or per capita income. It is a qualitative concept about the well-being of a population to which considerations of income distribution and the distribution of State's expenditure are particularly relevant. The United Nations Development Programme (UNDP) has devised a very comprehensive concept—the Human Development Index (HDI)—which include life expectancy, educational attainment and income indicators to yield a composite measure of human development. Thus, HDI represents a combination of three measures: longevity, measured by life expectancy at birth; education, based on adult literacy and number of years of schooling; and income, based on access to resources. HDI is, therefore, a measure of likelihood of citizens living a long, healthy life; of their ability to participate in the life of the community; and of their having enough material goods to enjoy a decent life.

Democracy and Development

As the democratic ideology evolved and was embraced by many States across the globe, a question that was raised time and again was whether less developed and poor societies can really afford democracy. Among the various arguments which were raised in this regard, one is that the organisation of democracy is expensive and time consuming, and that a State's scarce resources of time and money may be better spent on more urgent needs of its population such as health, education and helping ensure basic economic survival. It was felt that organisation of elections, training of officials for democratic roles, the delay in policy formulation and execution necessitated by parliamentary and public accountability and so on, seem an unaffordable luxury for developing societies.

The defenders of autocratic regimes claim that democracy actually works against development, as democratic Governments are too slow to act and cannot implement farsighted and hard decisions because elected officials must constantly mollify their constituents. They argue that it is politically impossible to pursue policies, the fruits of which cannot be tasted for decades.

It has been seen that unlike the developed countries, the developing economies and Governments are in a distinct disadvantage in making the democratic system work. The social and political divisiveness in electoral competition is especially damaging where the States are newly formed and the national identity barely developed. Moreover, the informed and mature electorate that is needed if democracy is not to degenerate into short-termism, demagogy or outright intolerance, is typically the product of economic development.

It is also seen that the prospects for sustaining democracy without slipping back into authoritarian rule are greater, the more economically developed a country is. This is because of the effects that economic development has upon the character of the citizen body and the structure of the civil society. With widespread literacy and education comes a more mature and informed electorate. With an expanded middle class performing a variety of technical and professional roles, there is greater resistance to authoritarian forms of Government. And the process of economic development enhances the complexity of civil society and the variety of self-organising groups and associations with the confidence to defend their independence against Government encroachment.

Scholars who believe that there is a clear relationship between democracy and development point to the 20th century experience showing that prosperous countries are much more likely than poor countries to develop and sustain democratic political systems. Their basic assertion is that even if you reject materialistic explanation for political phenomena, economic progress creates a healthy environment for democracy. They further assert that democratic Government is necessary for any economy to function efficiently. Only if they are free from too much Government interference can investors and entrepreneurs pursue their own interest thereby energizing the entire economy. Then, as the economy grows, the sense of well-being fosters in people greater inter-personal trust and competence. These attitudes, in turn, foster restraint and compromise, traits which are essential for citizens in a democracy. The richer the country, the greater the percentage of its citizens with higher education, wherein schools and colleges lay stress on basic democratic attitudes.

However, it is also a fact that the qualitative aspects of economic development are themselves dependent upon the character of a political regime and the degree of its responsiveness to popular wishes. Democratic electorates are more likely to demand policies that moderate the extremes of economic inequality, and to support State spending on health, education and the physical infrastructure rather than on the military or on prestige projects with little social utility. Moreover, an open and accountable regime will use public resources more efficiently than a closed or authoritarian one. It will also be one in which the issues of development or major scandals, such as widespread human rights abuses, environmental degradation or famine, cannot remain undetected for long. The positive relations between democracy, development and the protection of human rights was underlined in the Final Document of the Vienna World Conference on Human Rights in June 1993. The question should, therefore, be whether a society can afford not to have democracy, given the depth to which unaccountable and unresponsive political power can sink.

The development of a democratic political system worldwide has been rather topsy-turvy. While States in North America and Western Europe are both developed and democratic, the same is not the case in many countries in Latin America, South East Asia, Africa and West Asia. Many of these States which set up democratic political structures after the phase of de-colonization and later the collapse of the Communist States have not evolved into liberal democracies, partly because of the poor or lop-sided economic development which followed. Study by scholars of Latin America also reveals that the high rate of economic growth has more often led to authoritarianism than to democracy, because economic growth generally widens the gap between the rich and the poor. The real challenge in many countries consists in finding a way out of the vicious circle that has so far prevailed in which the autocratic system that rapidly lose their shine regularly alternate with democracies resting on flimsy foundations.

It would be wrong, however, to conclude that democracy can only be sustained where there is a high level of economic development. There are examples of countries in all continents that have maintained open electoral competition and civil and political liberties over decades despite low levels of economic development, as for example, India, Sri Lanka, Jamaica and Botswana. The Government of the newly emerging democracies should encourage social development and pursue policies of sustainable economic growth from whatever level of development they start, so that different sections of society are able to share in the benefits of development and the intensity of conflicts is moderated. The policies of the principal economic agencies of developed countries can play a significant role in this context.

There is now an international dimension to political change. Well-educated business executives, technicians and scientists who interact at a global level also exchange ideas and beliefs and, therefore, no Government can quarantine its citizens from liberal democratic ideas. Economic development, education and democracy, thus, should go together.

Indian Experience

The elements of the human development paradigm, *i.e.* increase in productivity through active participation in income generation, equal opportunity for all, sustainability of development and empowerment of the people were also goals which were emphasised from the beginning of India's national movement. Gandhiji's concept of *Swaraj* and Pandit Nehru's 'Tryst with Destiny' included all these paradigms.

Fundamental Rights

The Constitution has two specific Chapters that broadly reflect the human development policy for the Government. These are contained in the Chapters on Fundamental Rights and Directive Principles of State Policy. Articles 12 to 35 of the Constitution elaborate on the Fundamental Rights and their importance in democratic life. These rights are as follows:

- Right to Equality
- Right to Freedom (of speech and expression, to assemble peacefully and without arms, to form unions and associations, to move freely within the territory of India, to live in any part of India, to practice any profession or occupation)
- Right against Exploitation

- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Directive Principles

The Directive Principles of State Policy contained in articles 36 to 51 outline an important part of the framers' vision for good governance. For example:

- Article 38 says that the State shall secure a social order for the promotion of welfare of the people.
- Under article 39 the State shall, in particular, direct its policy towards securing:—
  - (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
  - (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
  - (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
  - (d) that there is equal pay for equal work for both men and women;
  - (e) that the health and strength of workers, men and women and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength;
  - (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Unlike Fundamental Rights, which are guaranteed and enforceable in a court of law, the provisions contained in the Directive Principles are not enforceable by any court. But the principles laid down are, nevertheless, fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. The object of the Directive Principles is to achieve a Welfare State in India.

The Supreme Court of India has also opined that the Directive Principles supplement Fundamental Rights in achieving a Welfare State. They have served as a guide for the Parliament and the State Legislatures and the balance between the two is now considered a part of the 'basic structure' of the Constitution. The Government of India Fiscal Commission 1949 had observed, "it is obvious that a policy for economic development of India should conform to the objective laid down in the Directive Principles of State Policy." The objective of achieving economic development within a liberal democratic structure will greatly be determined by the harmonious integration of the political rights along with the socio-economic objectives as enumerated in these two Chapters of the Constitution and related provisions.

The Constitution of India has, since the last fifty years, provided a framework for the functioning of the political democracy and achievement of economic development of the country. It has, to a very large extent, firmly established in a huge country like India with immense socio-economic and cultural diversity, a political system which has successfully worked the largest functioning democracy in the world, which is making rapid strides in the sphere of economic development.

Constitutional Provisions

To attain the twin objectives of securing democracy with development, the Constitution of India, as mentioned above, guarantees Fundamental Rights to its citizens to usher in political democracy and the Directive Principles of State Policy for achieving social and economic democracy in the country. The devolution of political power to the people was sought to be achieved under article 40 of the Constitution. The 73rd and 74th Constitutional Amendments aimed at establishing democracy at the grass root level by establishing village panchayats and urban local bodies and holding direct elections to them. The Indian Constitution also provide social and economic empowerment for the uplift of the weaker sections, women, etc. The 93rd Constitutional Amendment Bill, as passed by the Lok Sabha, giving the status of a Fundamental Right to education has also a great role to play, because it would provide the means of self-realization and self-expression and the physical, social, emotional and spiritual development of human beings. Successive Governments have found guidance from the Constitution to enact various welfare programmes and schemes in this direction.

On the economic front, the development plan of India has two major components. One is to improve the living standards of the weaker sections of the community and the second is the reduction of inequalities in asset distribution and prevention of concentration of economic wealth in the hands of a few. Though there has been some improvement in the economic well-being of the poor due to several anti-poverty programmes, the fact remains that about 30 per cent of our people still remain below the poverty line even after five decades of planning. Some of the studies show that the gains of development over the years have not been equitable. For example, there is considerable disparity in income level of those living in rural and urban areas, between the developed States and the under-developed States and there is a widening disparity between the rich and the poor. In spite of all regulatory measures, there is not much improvement either in land distribution or industrial ownership. Some of the recent data in land distribution indicate that 10 per cent of the rural households possesses 56.33 per cent of the agricultural land, while the bottom 70 per cent owns only 13.83 per cent of land. Further, new technology and modern practices in agriculture during the last two and a half decades has also sharpened the economic disparities between the rich and poor farmers. As Prof. Sukhamoy Chakraborty has observed, 'if Indian society values growth with equity, as plan documents repeatedly emphasize, India has still a long way to go'.

The experiences of some of the developed countries show that countries which accord high priority to human capital formation derive rich dividends in accelerating economic growth, increasing employment opportunities and reducing income inequality. When the distribution of income and assets is uneven, even high economic growth does not improve high standard of living for people at large. If Governments can provide a well-designed social expenditure, human development can significantly improve even when there is a low economic growth. According to C. Rangarajan, all this implies that in order to achieve a higher standard of human development we should aim at a higher rate of economic growth, increase expenditure on social sectors and allocate investible funds in an efficient manner.

However, despite these shortcomings in the economic and social field, when compared to the situation just after Independence, there has been a remarkable growth over the last five decades in various sectors. In the colonial era, we saw millions of people perishing due to widespread and frequently occurring famine, which is now surely a thing of the past. A very significant achievement has been that foodgrain production has not only kept ahead of the rise in population but India is now in a position to even achieve the status of a net food exporter. The allied areas of agriculture like dairy, poultry, horticulture, etc. have also made tremendous progress.

The industrial development in India has also seen phenomenal growth. The Industrial Revolution went past India without any benefit for this country with hardly any industry of consequence existing during the time of Independence. Over the past five decades since Independence, India has emerged as one of the ten largest industrial nations in the world with the third largest pool of scientific, technical and managerial skills. At present, India is one of the leading countries in the field of information technology and bio-technology. The industrial infrastructure that has been built up is sophisticated as well as diversified.

The rate of growth of India's GNP which was hardly one per cent at the time of Independence now ranges between 6 and 8 per cent with an average of more than five per cent. Besides, the inflation rate which was over 20 per cent earlier now hovers around 2-4 per cent. The population growth which has been staggering especially in absolute terms has been stabilized and stands at 1.92 per cent at present with prospects of further lowering of the rate. There has been a sharp fall in the death rate because of the availability of better medical facilities, higher availability of food grains and other sources of nutrition. The average life expectancy of an Indian which was only 33 years in 1951 has gone up to 60 years in the 1990s.

India today is taking rapid strides to make available new technology to its people in both rural and urban areas for greater political, social and economic development. The objective is to benefit from information and communication technology projects by receiving enhanced access to information and communication across large distances, improved access to governmental and quasi-governmental resources and services, opportunities to trade or bank on-line through kiosks, opportunities to design, manufacture and market their products through Internet or intranet systems, education through computers or about computers or both, and superior medical advice, diagnosis or knowledge in their own locality.

Democracy and development in India since the last five decades has generated both optimism and also concern. But despite the differing perceptions, the most remarkable feature is that India has consolidated itself as a stable and united political entity and has made rapid social and economic development. While political scientists and economists may debate as to how successful the strategy has been, there is no denying the fact that the democratic structure of the country has taken deep roots and has also at the same time shown adequate flexibility to contend with the complex issues which the political and economic system has thrown up from time to time. The elections held based on universal adult suffrage to various levels of the Union, State and local level bodies have time and again succeeded in ensuring peaceful transition of power. Through the spirit of accommodation and reconciliation, the political system has resolved many issues and differences arising out of the process of nation-building and provided to its people an environment to live together in peace and prosperity.

India and China : A Comparison

India's progress as a democratic State since Independence and the developmental path it has followed does compare well with other Asian countries, including its northern neighbour, China. According to a study made by Bruce Gilley of the *Asian Wall Street Journal*, foreign investors and companies who eulogise the 'Chinese Miracle' have shown a rather narrow perspective, which is solely guided with profit making and returns on their investment only. A comparison of the two countries over the past two decades made by some analysts shows that from the broadest indicator of such progress, *i.e.*, the HDI as formulated by the UNDP, their achievements are broadly comparable. The rating of China rose to 0.718 (out of possible 1.0) in 1999 from 0.553 in 1980, a 30 per cent improvement. India's rating rose to 0.571 from 0.433, a 32 per cent rise. These figures tell a heartening story of better lives lived by people in both countries. They certainly do not tell a story of Indian failure compared to China. The average Chinese is today living to the age of 70, seven more years than in 1975, while the average Indian is living to 62, *i.e.* 12 more years than in 1975, according to official figures. Across a range of indicators, India's improvements are as good as or better than its northern neighbour.

These analysts also point out that the Chinese began their market reforms in the early 1980s while in India, the same happened in the 1990s, that is, almost after one decade. India's per capita GDP growth during 1975-1999 was 3.2 per cent, less than half of China's 8.1 per cent. But that the GDP cannot be a very sound indicator can be seen if we assess the overall welfare of the people. It is observed by scholars who have keenly watched the development of these two countries that compared to China, India's income distribution is less skewed, its indicators of pollution and environmental degradation less severe and the permanence of its fundamental political institutions more assured than China's. The one undisputed black mark, according to analysts, in India's record is in poverty alleviation, where China has done better by comparison. But the larger picture still favours India.

Analysts and social scientists also stress that one of the reasons why China has attracted $47 billion in foreign investment last year compared to India's $5 billion, is that its officials are not accountable. They are unquestioned and enjoy overriding powers and repress union activity to attract foreign investment. This does not happen in India with its strong and independent Judiciary where rights and property are protected under the Constitution. It is recognized now worldwide that rights and freedoms are good for economic and social progress in the long run because they make markets more fair and open and give people a stake in the system and ensure that policies are legitimate.

Material benefits are only one part of the story. The other indispensable means for this are guarantees of rights and freedoms. On this score, once again, analysts emphasize that there has been an 'Indian Miracle' compared to China. India has remained the world's largest democracy and has provided its citizens with a great deal of protection for their freedoms. The Chinese are more free today than they were earlier, but their freedoms are not guaranteed, and their rights are also limited. The repeated crack-down on dissidents, religious adherents, environmentalists and others by the State are a sad commentary on China's human rights records as compared to India's remarkable tolerance of diverse life goals.

Conclusion

Keeping in mind all factors which sustain and promote democracy and development, it is seen that a democratic Government is more likely than other types of Government to meet the needs of the people. The more say the people have in the direction of policy, the more likely it is to reflect their concerns and aspirations. 'The cobbler makes the shoe', went the ancient Athenian saying, 'but only the wearer can tell where it pinches'. It is the ordinary people who experience the impact of the Government policy in practice and only if there are effective and consistent channels of influence and pressure from below does the Government policy tend to reflect this grass-root experience. However well-intentioned the holders of the public office may be, if they are immune from popular influence or control, their policies will be inappropriate to people's needs and may degenerate to become self-serving and corrupt.

The issue which is of significance is the way to reconcile the tension between economic development and political democracy. A political democracy works on the basis of one person, one vote. The distribution of votes, unlike the demands of development, does not necessarily converge. Governments are elected by the people. Even where they are not, the

State needs legitimation from the people. Markets, on the other hand, are driven by demand and not need. For this reason, among others, successive generations of economic thinkers and political philosophers have stressed the role of the State in bringing the ideals of political democracy and economic democracy closer together. The State may or may not succeed in this task. It is clear, however, that in reconciling economic and political democracy, a sensible compromise must be reached between the economic directions which the market sets on the basis of purchasing power and the priorities which a political system sets on the basis of one person, one vote.

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TOWARDS A NEW ERA IN GOVERNANCE

V. Kurien

Introduction

The objective of good governance is to facilitate the development of our people and our society. The processes of governance are guided by law and the principles of a Welfare State. The Parliament and the Legislatures play an important role in governance, both by making laws that uphold the highest values of our Constitution and by holding Governments accountable for their policies, programmes and actions. Governance requires Governments to seek the approval of the Parliament and the Legislatures in imposing duties and taxes, put in place the laws that enable administration of justice and order and to generally seek laws that enable the well-being and progress of our citizens. Of course, in an increasingly liberal and global economy, governance also relates to the Parliament and the Legislatures enacting appropriate regulatory laws and ensuring that Governments do a good job as regulators. This is a very important function since it is just not correct that the *bona fide* interests of our nation and its people should be allowed to be subjugated to the whims and fancies of the market.

Quality, Transparency and Time Management

If the Parliament and the Legislatures want good governance, then their processes must focus on making the Governments work for three main goals, namely, quality, transparency and time management. These are the same goals that have guided my work over the past five decades and in fact are a part of the value system of our dairy cooperatives. Our rural milk producers bring milk to their village dairy cooperative twice a day, round the year. Time management for them is a habit and a value they have always practised. Our rural milk producers get to know the quality and quantity of milk they pour in their society's cans no sooner than they have done so. This establishes transparency and enables them to take measures for improving the quality of milk produced by their milch animal. Such transparency also serves two important objectives. Firstly, it establishes the integrity of the institution and the persons involved in them. Secondly, it brings about member loyalty and allegiance to the institution. The next time that the milk producer comes to pour milk, she receives the payment for the milk poured earlier in the morning, or, the previous evening. This ensures that the producer receives her payment in time and contributes to further reinforcing her faith in the cooperative. These values are followed in a similar manner by the dairy cooperative union at the District level and by the dairy federation at the State level.

Imperative of Good Governance

There are important parallels that can be drawn between delivering good governance and a well managed dairy cooperative. Like Governments, our dairy cooperatives work round the clock, each day of the year, interface regularly with thousands of milk producers and consumers, comply with a plethora of laws, handle not just a perishable but a politically sensitive commodity called milk, accept and deal with public opinion and criticism and, in the final analysis, are accountable to run the cooperative as a democratically controlled viable enterprise. Like Governments, our dairy cooperatives too promote democracy and function in a democratic manner. Dairy cooperatives are governed by the internationally accepted principles of cooperation and have a level of transparency that is seldom found in any other form of organisation. Our Governments too are supposed to operate in a similar, if not better, manner. But why are they unable to do so?

Democracy in Governance

Before I begin to answer the question I have just asked, let me clarify that we do need Government. We need Government in areas such as national policy formulation, international relations, administration of justice, law and order, large public works, communications, infrastructure and research and development. At the same time, if we, as a nation, are to liberate our wealth, we must re-deploy the excessive resources our Government unflinchingly commits each year to unproductive areas such as Government salaries and subsidies—except those specifically targeted at the rural and urban poor.

Today there is talk of down-sizing Governments. Well, Government salaries can be cut drastically only when Government can address the fact that it is overstaffed at the bottom and under-qualified at the top. The way out is that Government's Budget should include provisions for voluntary retirement at every level. I believe that our country has women and men who have distinguished themselves in every field of human activity. Therefore, Governments would do well to bring in such distinguished persons, perhaps on a simple honorarium, into policy making bodies and to head Departments of Governments in their areas of expertise.

The only way to roll back populist subsidies is to make those who can afford to pay, actually pay. Governments must immediately stop expending thousands of crores of rupees to benefit those who can and should pay for power, health, education, water and even for money. I would say that even our farmers will be willing to pay. All that the Government must do is to ensure that they provide to farmers quality power and inputs, water and money, on time, and when the farmers actually need them.

I have always believed that to facilitate the development of people, it is necessary to place in their very hands the instruments of development. If we look at this issue from a larger perspective, what this means is that our Union Government must do only that which cannot be done by the States. Similarly, State Governments, in turn, must only do that which cannot be done by the local bodies. And, finally, local bodies must never do, or interfere in, what autonomous self help groups of people can do, to develop themselves and the society they live in.

The crux of the problem is that no sooner is Government let into an unwanted area than their civil servants are quick to be posted there as an instrument of Government. I know of more than a few instances where the civil servants have advised the political leadership to involve the State in this, that or the other activity. In the process, they have continually employed development as a means to create and sustain dependency on the Government, rather than nurturing the self-reliance that is the foundation of a strong polity. Furthermore, I fail to understand in what manner are civil servants superior to a professionally trained and qualified person in facilitating, say, rural development?

In sharp contrast, the power of non-government organisations—particularly those that are owned and controlled by users—is that they are not only responsive to the owners, but must be so. They build indirect accountability of those with authority that is essential to such responsiveness. It is, therefore, my belief that Government must get out of areas that it has no business to be in. If this were to indeed happen, and I am an optimist, I would presume that their officers too would automatically withdraw. This would then leave the field to the people who are the owners and users of that particular activity to decide what they should be doing and whom should they be entrusting their affairs to.

Similarly, even in the case of other bodies, Governments must leave the field to those who are actually responsible for doing what they do. Thirty-five years ago, there was a single Ministry of Food and Agriculture with a single Secretary and perhaps three or four Joint Secretaries. While they did not always agree to what was proposed by autonomous bodies, one could be assured that decisions would be taken in a reasonable period of time, fairly and honestly. Today it seems that almost every issue on which we deal with, the Government involves a host of Ministries and Departments. Instead of a single Ministry of Food and Agriculture, we now have a department of Food Processing, a Department of Dairy Development and Animal Husbandry, various Boards, Committees and so on.

While one can understand that a Department of the Ministry of Finance must necessarily be involved when matters of significant investment are involved, or for that matter, the involvement of the Department of Law on a matter of legal importance, the need for, much less, the involvement of a Department of Food Processing in matters that deal with agriculture is questionable. Any cooperative dairy must compensate for the difference between flush and lean season production by producing milk powder and other dairy products. Today, that cooperative must deal with the Department of Food Processing—which seems to have its own ideology and biases, when it comes to products—and with the Department of Agriculture when it comes to liquid milk. Then, to further the confusion, the Government added to the Ministry of Agriculture a wholly unnecessary Department of Dairy Development and Animal Husbandry. At a time when we are told that resources are scarce, it would seem to only make sense to consolidate responsibility for milk, and products made from milk, in a single Department that is also responsible for other agriculture produce and products.

Similarly, it is also objectionable that under the Government's rules of business, vegetable oil is handled by the Department of Civil Supplies. This suggests that the main purpose of oilseed and vegetable oil production is for public distribution. The fact of the matter is that, from a nutritional standpoint, vegetable oil is not an essential commodity, although it is treated as such by the Government. Milk, which is far more necessary nutritionally, is not considered an essential commodity by the Government. The problems arising from such confusion can easily be seen by the fact that by far, the greatest proportion of Public Distribution System (PDS) vegetable oil has been sold in the States of Gujarat, Maharashtra, Andhra Pradesh and Tamil Nadu, all major oilseed producing States. Uttar Pradesh and Bihar, with their large populations below the poverty line and scant production of oilseeds, received one per cent and two per cent of PDS oil supplies, respectively. It does not take much imagination to recognise that PDS oil was being diverted and used for adulteration, and to see that it was used by the oil trade to depress oilseed prices during harvest seasons.

When the Government decided that we could no longer afford the massive oil imports that resulted from such confusion and that they were working at cross purposes, it took a technology mission—housed in the Ministry of Agriculture—to bring a modicum of coherence and rationality to our policies and programmes. What the technology mission did was, in fact, to act as a single Ministry of Agriculture would have, had it retained the responsibility for oilseed and vegetable oil. When we recognise that agriculture is a State subject, it becomes all the more difficult to justify the incessant proliferation of Government involvement in the sector, and the consequent duplication. The end result is that decisions that ought to be taken in a day are dragged on for months and, finally, ignored by those who were party to them.

Therefore, I would like to conclude by recommending that it should be the responsibility of the Parliament and the Legislatures to put in place a public policy on governance and enact such laws as may be necessary to ensure that Governments are lean, efficient, and unified in their structure and operations. The sooner we do this, the easier it would be for our nation to come closer to becoming a truly developed nation.

SOME IDEAS ON GOVERNANCE

Abid Hussain

Introduction

The Constitution of India has clearly articulated the social and economic goals and has specified agents for achieving the promised social revolution. Matters concerning formation and working of the executive agencies (both political and civil) are spelt out. Citizens have been assured that the Executive, together with other organs of the State—Legislature and Judiciary—would uphold their rights and remove the iniquities from which the anti-democratic forces derive their sustenance. Good governance, it was hoped, would transform the social, political and economic life of the people, within the framework of democracy. In the beginning, the constitutional arrangements relating to governance worked more or less to general satisfaction and provided the law-abiding citizens with a fairly safe and secure life. However, as time passed, their inadequacies became evident and the Government lost its elan as it failed to live up to the expectations of the Constitution to give real substance to the policies designed to promote social well-being.

Managing Institutions

The present situation is characterised by a pervasive disenchantment with the way things have worked out. It is futile to debate whether it is the institutions provided by the Constitution that have failed or whether the men who work these institutions have failed. Probably both, but while we cannot abolish the men, we can only endeavour to improve the environment in which these men function, hoping that a more conducive environment would improve the behaviour and performance of the men and women who command the strategic heights of governance.

Importance of Good Governance

The failure to ensure the socio-economic goals is now no longer attributable to a scarcity of resources but to the failure of governance. It is the insufficient attention paid to such a transformation that has deepened the fissures between the people and the administration. The failure to regenerate society lay in the basic conceptual weakness that encouraged the untested assumption that people are best served when the ruling classes originate, execute and administer policies, plans and programmes for their welfare from above. This misconceived paternalism has reinforced the tyranny of the *status quo* and has gravely weakened forces of change. The Indian problem, Nehru had recognised, was not to foster stability in the system but to transform it. The 'law and order' preoccupation of the bureaucratic mind led to the entrenchment of the system that the Constitution had promised to transform. This mind-set thwarted the legislative initiative for the socio-economic well being of all sections of people. Repeated surgery, in the shape of constitutional amendments, has had to be resorted to, to instil even minimal transformative features. Examples include land reforms and steps to deal with the entrenched injustices of the caste system and halting measures relating to the right to property. Another fundamental flaw vitiating governance emanated from the lack of conviction that the consent of the people is the basis of democratic Government. The over-arching theme, a legacy from the colonial days, that people are passive category subjects rather than citizens remained firmly rooted in the official mind. People woke up only at intervals of five years or thereabout to choose their rulers and to go back again to a life of political passivity. Political mobilisation of masses mostly remained neglected. This produced all manner of infirmities and gave rise to their alienation from the political system.

Accountability of the Executive to the People

The rights of the people are inalienable. The words *We, the People,* signify not only the moral and historical insights of the founding fathers of our Constitution but they serve to reaffirm that they are the source of all constitutional authority and that the test of good governance is the measure of people's well being. However, the functionaries of the State have failed to realize that they are servants of the people and not their masters. The test of a vibrant democracy is the degree of success in calling its Executive to be accountable to the people. The words *We, the People* were not empty rhetoric; they were earnestly inscribed to recognise and respect India's political sovereign—the people. The highest rank of a person in a democratic country is to be its citizen. But the new administrative class, working under the mesmeric spell of colonial attitudes, was reluctant to consider the people at large as citizens. They continued to treat them as subjects or *ryots,* both owing allegiance to a superior master. This denial robbed them off power and made it possible for the Executive to snuff out the significance of the people. It is the possession of power that gives people control over their destiny and authority over those whom they have chosen to serve them. Ambedkar had cautioned: "By Independence we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves".

Ensuring Self-Governance to the People

Self-government is better than even good governance. Unless self-government is ensured by clear devolution of power from the centre to the periphery, people are prevented from participation in governance. They cannot eliminate arbitrariness in Executive actions which generally tilts the balance in favour of the privileged. Moreover, the 'top-down' state of affairs does not legitimise 'self-government' which is of primordial value. 'Top-down' administration stifles public initiative. To make people effective, they must consciously enjoy and assert their constitutional entitlements and not be mere supplicants for, or objects of administrative largesse. That is the rationale of the 73rd and 74th Amendments to the Constitution. A strong sense of public duty comes from empowerment. People's attitude changes from one of obedience to authority to active participation in governance. It is only when the gap between the Executive and the people is narrowed down through decentralisation that democratisation can occur. The whole configuration of governance changes, if democratic order is conceived not as a 'once-in-five-year-ritual' of changing the guard but as a continuous renewal of democratic life from a knowledgeable and participative citizen body. A citizen as a political and social unit could alone take responsibility for transformation of the state of the society. Adequate constitutional amendments in this regard could alone make it possible for strengthening people's say in governance involving beneficiaries in implementation, introducing flexibility through greater autonomy to States and local bodies, enabling greater involvement of voluntary agencies, introducing better delivery systems through self-help groups and so on. The essence of the matter is that there should be effective participative democracy at all levels; once people become the fountain head of power, their role in governance becomes meaningful and effective. It encourages an active sense of public duty, replacing emphasis from authority and obedience to active participation. The system can deliver the goods through devolution, decentralization and democratization, thereby narrowing the gap between the base of the polity and its super-structure.

Institutions and structures do impinge on the working of the fundamental law of the land. There is, however, a substantive problem of the philosophy that underlies such institutions and structures. And that has to do with the role of the State. Immediately after the Second World War, when the decolonised world began its quest for development, the intellectual context favoured a strong, in fact a leading, role for the State in the developmental process. It was partly a legacy of the Great Depression, but it was also a reflection of the major changes brought about by the October Revolution of 1917. An alternative route to the process of industrialisation, which held the key to the removal of poverty, in which the role of the market in the allocation of resources was believed to be marginal, was the lynchpin of the strategy for development enshrined in our Constitution.

Some of the shortcomings in the governance outlined above are inherent in the centralized nature of the Indian State which lays down the parameters of the administration. There is an indissoluble link between the two. This was evident when the norms of colonial administration, with their long ancestry, came early to stamp their features on the post-Independence dispensation. Colonial administration had created a top-down system of command and obedience in which State and local units of Government were treated as subordinate to the Central Government.

Reallocation of subjects from the three Lists given in the Seventh Schedule is a prerequisite in this context, to make governance come closer to the people. The Central List of subjects should contract drastically, confining the Centre to subjects of national importance such as defence, national security, foreign policy, inter-State rivers, communication, macro-economic planning, environment, etc. The list of subjects meant for the States and for other layers of Government will have to be augmented with the Centre refraining from involvement in matters best addressed at the lower levels.

Decentralisation of Power

There is no reason why the Central Government should have large and unwieldy Ministries handling subjects like education, health, agriculture, rural development, social welfare, industry, power, etc. when these areas can more conveniently and appropriately be handled at the State, regional or district levels. The Centre can at best be a clearing house of ideas and knowledge but for it to be actually involved in shaping policy and in allocation of resources is an over-lapping of jurisdiction. Down-sizing of the Government should also follow. Big Governments are not always conducive to efficiency and promptness. People should know where the buck stops.

Similarly, if the State Governments do not delegate authority and resources to units below the State, similar acts of aggregation and aggression occur, depriving local bodies of initiative, capacity for innovation and experimentation. The richness and diversity of experience across tens of thousands of communities in locations across the country is sought to be standardised and homogenised by such straitjacketing as is involved in the present arrangements. We need to break away in a decisive manner from this dogma of centralisation which had its counterpart in centralised planning. There must be power in the local Governments to 'remould' through experimentation, our economic practices and institutions to meet the changing social and economic needs. A single courageous unit of local Government may serve as a laboratory and try a novel, social and economic experiment without risk to the rest of the country.

Strengthening Political Unity

However, we need a few cautionary sign posts. A major achievement since the attainment of Independence was the creation of a common Indian market that approaches in size some of the biggest markets in the world. *This is the foundation of political unity. Anything that weakens or threatens to weaken or destroy India's political unity has to be prevented. Therefore, no unit of the Union can be empowered to weaken the foundations of the common market.* It is because of this predominant consideration that currency belongs pre-eminently to the realm of the Union Government. So does defence, the hallmark of national sovereignty. Further, it should always be kept in view that when the Centre does not hold, societies become polarised. Similarly, the fact that some items belong to the Union List does not mean that the Union can act in any manner it thinks fit as long as it is assured of legislative support. The concept of continuous renewal of consent means that within limits, Central policies are publicly debated and agreed to. The citizens should have access to information, data and arguments that go into the making of Executive or legislative decisions. Only then can citizens feel that they have contributed to the functioning of the polity.

Devolution of Resources

This has to be considered with devolution of authority, responsibility and resources to appropriate levels. Decentralisation cannot work without the devolution of resources. If the major sources of revenue remain with the Centre, then the notion of State autonomy would lack substance. Therefore, along with re-configuration of the three Lists of the Constitution, there has also to be a re-configuration of the sources of revenue. The State should be able to raise resources for the tasks they have to undertake.

This would bring into broad relief issues of regional imbalance. However, they cannot be swept under the carpet by making the comfortable assumption that the Centre can act as a big brother to help the weaklings. The last four decades have amply demonstrated that regional imbalances have grown in spite of these subventions provided by the Centre to help the weaker States.

The principle that responsibility must be accompanied by corresponding resources can be dispensed with only at the cost of perpetuating the beggar's mentality. The gap between the rich and the poor States within the country has to be bridged by policies that stimulate growth in the poor States, rather than by handouts which end up in the hands of the undeserving. The existing policy regime has only stimulated competition between the States on the size of the Plan. The bigger the size, the more successful is the political leadership of the State supposed to be. Performances and outcomes do not matter. Thus, some States can continue to fallow in illiteracy while their leaders go about trumpeting the size of the Plan they have secured from the Planning Commission. The States must have the matching resources to do what they ought to but they must also take the responsibility—fiscal, political and administrative—for what has to be done.

The present policy regime is an elaborate subterfuge for seeking scapegoats. Regrettably, the Constitution has encouraged this charade. The sooner it ends, the better it will be. This is the only way to harmonise the imperatives of all-round development with those of reducing, and ultimately eliminating, caste-based iniquities. The List of subjects allocated in the three Lists indicated under the Seventh Schedule will have to be drastically realloted to make the States operate on a more federal basis than at present. This is inseparable from an equal insight in financial framework in which generation of fiscal resources acquires greater and balanced autonomy. Consistent with this principle, it would be desirable to provide in the Constitution that the additional terms of reference under article 280(3)(d) in the interests of sound finance should be finalised in consultation with the States, preferably through an endorsement of the National Development Council. Also, the time would appear to have come to give to the recommendations of the Finance Commission the status of a legally binding award. This would enforce accountable and responsible behaviour throughout the spectrum of the institutions of governance.

When one talks about resources, it does not only mean financial resources, it implies human resources as well. One cannot ask a district councillor to take charge of primary or secondary education at the district level without giving the elected district council control over administrators and teachers who run the school system. If a primary school teacher looks to a distant education director or the Education Minister or State level elected representative from the area for his promotion or any other improvement in his conditions of service, he is not going to be accountable and responsive to the needs of the local community. This simple example raises the question of the present structure of social and economic services and how it needs to be remodelled or refashioned to bring it in line with the requirements of the age of decentralisation. We have to think in terms of services being owned by the communities which use these services. There is no reason why the district councils cannot recruit, train and manage cadres of school teachers, supervisors and administrators for primary and secondary education, leaving the area of high speciality professionals like curriculum developers to be handled by regional or State level bodies. This would bring local communities in intimate relationship with the education personnel and create an appropriate environment for bringing forth responsibility and accountable behaviour from services to the local communities that pay them. It will also ensure that the communities themselves fulfil their obligations towards such personnel and towards the larger objectives of creating and sustaining a healthy and vibrant education system. Similar logic can be employed in regard to other services which are needed at the district level and it can be extended upwards to the State level.

What is urgently required at this juncture is a straight forward recognition in the fundamental law, cutting through the verbiage of devolution, that a district is the basic unit of planning for development—social, cultural, economic and human. Along with this, it is necessary to provide that creation of new districts has to conform to the criteria of viability. Otherwise the political process already under pressure of the forces of fragmentation would be unable to at least moderate the present trends.

Functions, finances and functionaries would have to be placed under the direct supervision and command of elected bodies at relevant levels of operation. This would, to a substantial degree, correct the existing distortions and make officials answerable and accountable to the people. This has implications in respect of devolution of political and financial powers from the Centre, too. Devolving as much power as possible to local and regional levels of Government increases the ability of the system to foster citizenship and to enhance the citizen's decision-making abilities. Officers at local levels have greater initiative in implementation under the watchful eyes of the people directly affected.

Dispersal of power through local autonomy maximises opportunities for popular participation and helps change the nature of the relationship between the State and the civil society. Instead of being merely the passive recipients of rights, citizens become active agents. A democratic society cannot function properly if everything in it is left only to the State or even to statutory bodies. Statutory action will be infructuous if it is not underpinned by voluntary action. The driving force for regeneration comes not from the State or its institutions but from social movement. People acquire more characteristics of a ruler than ruled where they set up associations and NGOs to assert their rights and preferences in the domain of public policies. This exercise of political power through civil society opens the way for *concomitant democracy*. Civil society consists of open and secular institutions that mediate between the citizen and the State; thereby, State and civil society do not work as antithetical or substitutable but as complementary to each other. Private associations and pressure groups act as a powerful brake on State institutions and also monitor the conduct of public servants. In the absence of civil societies, the State machinery and civil servants become the dominant agents of power. The modern idea of self-government requires the emergence of civil society which would make people self-reliant rather than remain dependent on State institutions and subject to their control.

Imperfections of the Present System

One of the marked weaknesses of the present regime has been its failure to effectively play its role in the *socialising process*. It has failed to use the machinery of the State to create a society of equals founded on the principles of social justice, secularism and eradication of casteism. In this regard, the situation of the *Dalits* and backward castes points to a glaring failure of the State. In spite of several programmes launched by it, the State has failed to energetically lift up the *Dalits* and members of other lower castes. As the Executive has overwhelmingly identified itself with the stratified sections of the privileged few, it remained sensitive to the calamities that befell the weaker sections of the society and reluctantly took steps to repel the most injurious actions perpetrated against them. Large sections of these people remained docile, submissive, passive and tame. Piecemeal changes improved the conditions slightly, but the very spirit of the people by which the Constitution was to be sustained continued to get weakened.

Executive Machinery and the Constitutional Directives

Poverty which had its roots in the old system of land holding and wealth accumulation also remained by and large unvanquished by the programmes launched to eradicate it. The Executive machinery failed the basic aims of the Constitution to eradicate mass poverty and illiteracy and to improve the standard of health and general well-being. These received scant support from the regime in spite of big promises made to fulfil the scheme of things enshrined in the Constitution. The administrative classes emerging as an elitist class failed to identify themselves with the meek and the helpless, nor did they strengthen social movements wedded to social transformation. Relevant provisions of the Constitution in this respect remained mostly neglected by the executive agencies.

The arrangements of administration (bed-rock of governance) under the Constitution now appeared inadequate to meet the situation. The effectiveness of premier services to play its role in augmenting the socialising process remained limited and foreclosed possibilities of finding just solutions.

Revamping All India Services

One of the problems that remains to be addressed in the context concerns the All India Services. The structural problem is that the two services—Administrative and Police—were founded on the imperial idea of territorial control. It was at the district level that the *Raj* really became an operational reality. The territorial integrity of the imperial domain rested on the territorial control over hundreds of districts over the length and breadth of the country. Therefore, services were recruited for the purpose of maintaining political control over the vast territories of the empire — and their counterparts could be found everywhere in the colonised world governed by Britain — but were expected to do sundry other jobs such as tax collection, once again the major part being from land, regulating trade and industry and supervising urban centres, but the numbers involved in staff jobs in the central and provincial secretariats were miniscule compared to the presence of the services at the district level.

This colonial idea was not abandoned when the country became free. The present situation is that the structure of the All India Services would appear to be incompatible with the development of full fledged democratic representative Government at the district level. In plain words, it means that law and order has also to be brought within the ambit of the elected district council which should also be in-charge of developmental activity. It may well mean the disappearance of the post of the district collector, an institution traditionally venerated by the advocates of the All India Services. We would need cadres trained to detect, prevent and investigate crimes and to maintain peace and public order but the need for a generalist officer to maintain public order may be questioned. In fact, the force to combat crime and maintain public order should, in a substantive sense, be subjected to the control of the elected representatives at the district level. It is only thus that public service at the district level would acquire significance and be the real stepping stone for leadership at higher levels.

The end of the imperial continuum in the administrative set-up may require a different conception of the generalist services. The brightest university graduates who wish to enter Indian Administrative Service could then be trained in a variety of subjects having to do with the economic and financial administration of the States and the Centre and policy making in higher branches of administration such as security, science and technology, international trade, etc. to constitute a truly elite corps of administrators who would be mobile within defined fields but would not perform the present generalist jig of moving from animal husbandry to defence to women's welfare which makes a total mockery of any concept of administration in these days of knowledge explosion.

These are some ways in which the IAS can be improved and rationalised and made to play an important role in transforming governance, and attention should be given to them. Above a certain level—above the present Joint Secretary to the Government of India level—the posts should be manned by persons drawn from different services and sources and even from industry, corporate houses, NGOs and the posts of Secretaries should not be the near monopoly of IAS officers. *We should specialise some of the generalists and generalise some of the specialists through proper career management.* Such persons alone should hold the top posts. Career management has to improve greatly and be freed from day-to-day political manipulation. The system which has come into vogue of a Minister choosing his Secretary to Government from among the officers of his own State has to be given up at once. In the early years upto the 1970s, it was recognised that a Secretary was Secretary to the Government and not Secretary to the Minister and care was taken in postings most of the time to ensure that the two did not belong to the same State. Exception was made only on the basis of the individual work of an officer for a particular job and not because 'x' Minister wanted 'y' officer from some State or community.

For career management and preparation of lists of persons suitable for senior appointments on an objective basis, international experience is available. The political leadership should be willing to look into this aspect also.

The absence of a clear-cut relationship between the people and the State functionaries is responsible for much which has gone wrong. All this happened because, inadvertently or otherwise, we allowed the colonial legacy of administration to continue to hold sway in the post-Independence era as well. For instance, the change of nomenclature from ICS to IAS did not even constitute a cosmetic change. The so-called 'steel frame' of the British empire became the role model for the fledgling IAS fraternity. The *guru mantra* of the old guard, *viz.*, the ICS, was the maintenance of the *status quo* and the new guard, *viz.*, the IAS, was only too willing to oblige and follow suit. It is a naive hope to expect *status quoists* to initiate or welcome changes for a variety of reasons. First, they have a vested interest in perpetuating their dominant advantageous position along with the privileges flowing from it. Second, being for the most part bureaucrats rather than intellectual leaders, they lack the vision and imagination to devise new and innovative policies, preferring to tread the beaten track and to continue familiar programmes.

Failings of the Executive Machinery

Many other failings of the Executive machinery leading to violation of Fundamental Rights have also become obvious. Some of the atrocious acts systematically employed by certain sections of the Executive devalued and debased the moral authority of the Government. The civil and police services failed to serve the people to the extent that was mandated. Corruption and illegal ways vitiated the course of justice and fairplay. Hardships, negligence and injustices accumulated, which had adverse political consequences. Perks, fringe benefits, special arrangements and privileges provided exclusively to the ruling elite set them apart from the people. What is still more galling is that most of these freebies had no legitimate sanction but were self-appropriate as some sort of a divine right. A massive decline in the prestige of public office occurred in the public eye. Corruption, like cancer, proliferated in the whole body politic. Delivery agencies were rendered ineffective and partial. Credibility of Government organizations suffered very badly and the run-away expansion in the bureaucratic apparatus of the State did not serve society but it served itself. Disillusionment with democratic governance became pervasive.

Achieving Constitutional Goals

The need for well-orchestrated administrative efforts on the part of the Union and State level administration in achieving constitutional goals and national targets is well recognized. While it cannot be denied that administration have assisted the Government of the day in making and implementing the policies, cases are increasing where they have failed morally and professionally and yet remained immune from imposition of penalties due to complicated procedures provided for taking action against them as per article 311 of the Constitution (against the erring officers). This has had a bad effect on the overall discipline. The safeguards provided to civil servants could only be justified if they were to exercise exceptional probity in their activities and conduct and were to put public service before self, not otherwise. Though the State functionaries do need safeguards against harassment, malice and witch-hunting by superiors and political leadership or even from some self-styled activists, in practice it is carried too far, becoming counter-productive. The excessive safeguards have emboldened some sections of the civil service to flout or circumvent rules with impunity and engendered a feeling of irresponsibility. It has also become a principal threat to the doctrine of accountability to the people. Thus, it has become extremely difficult to punish the guilty and put the working of the Executive on proper rails. Hence the need to modify the existing provisions and procedure and make the civil servants more amenable to discipline without any injustice being done to them. The doctrine of permanency will have to undergo a radical change. Measures weeding out personnel lacking probity or competence and induction of outside talent on contractual basis should also be encouraged.

There is no doubt that the way the administrative law has operated in the country and the way it has been interpreted by the higher courts has tended to confer an immunity against action to mete out swift punishment to the delinquent officers. But that only points to the need for a thorough reform of the administrative law as well as an overhaul of the judicial system. One cannot take away guarantees of fair and impartial treatment of services and still hope to get competent and devoted performance from public servants. The need is not to discourage good people; the need is to discourage bad people, which objective can be served only by efficient and speedy procedures to bring the guilty to the book.

Stability of tenure and guarantee against arbitrary punishment are essential if you want to get the best out of public servants. At the same time, the present methods of evaluation of performance need drastic reform. At present, neither the quantity nor the quality of output of individuals and collective units in myriad organizations of Government is properly measured with the result that the good, the bad and the indifferent are all lumped together and mostly chronology determines who goes ahead and who does not. These would also require extensive changes in the civil service regulations. This has to be a continuous process of bringing knowledge of organization into play in relation to our institutional set-up.

Cases have multiplied, giving rise to questions regarding the impartiality of the civil service. Critics blame them for putting self-interest above public interest and bending too willingly to do extra-legal dictates of superiors and political masters, instead of performing duties impartially and conscientiously as per law. Those sections of people who have been ill-served clamour for relief and for restoration of the Rule of Law and justice in transactions. Amidst a spate of corruption scandals and financial scams, it is imperative that the long-awaited Lokpal Bill becomes a law.

Need for a Strong Civil Service

A pliable civil service influenced and manipulated by the political Executive has severely strained the authority of governance and the Executive personnel have lost confidence in their own value of service to the people. They are consumed by a desire to achieve and hold high offices for their own personal gains. People have remained secondary and are treated more as subjects than citizens. This approach alienated the administration from the people and contributed to the prevailing malaise of misgovernance and significant demoralization all over. The system seems unable to solve problems that are faced by the people. Unsolved problems at times start driving some sections of society to violence, while the powers that be little realize that sporadic violence can lead to major upheavals in society.

Arbitrary and questionable methods of appointments, promotions and transfers of officers by political superiors also lead to corrosion of the moral basis of its independence. It has strengthened the temptation in services to collusive practices with politicians to avoid the inconvenience of transfers and to gain advantages by ingratiating themselves to political masters, at the expense of being fair and independent. They would do the politicians' biddings rather than adhere to rules. Lest the situation should become more vicious, it is necessary that a better arrangement be conceived under the Constitution. The question of appointments, transfers and placements is not to be left to the discretion of the politicians or administrative bosses but be entrusted to independent and autonomous boards constituted (under the Constitution) on the lines of the Union Public Service Commission (UPSC). Clear and predictable guidelines and revised rules of service may also be worked out.

The vertical hierarchy as against the horizontal one makes officers less accountable to the people for whom they have been employed to serve and more accountable to their official or political superiors situated away from the people lodged in places far away. This is inherent in the present arrangement where functions, functionaries, and finances are not placed in one place in the hands of those who run and preside over the local affairs, including local Government. This requires to be changed.

Right to Information

A major premise of a different style of governance is the citizen's access to information. The right to information cannot be hedged by so many restrictions as to render it meaningless. The idea is not as it is often supposed by the supporters of the proposal that people at the district level or village level would know what has been allocated for their respective territories and how it is being spent. The concept is much broader and much richer. How much should a country spend on its defence preparedness? What kind of weapons it ought to have, and why? *If democracy has to have any meaning in the modern context, questions like this kind cannot be reserved exclusively for the experts to discuss and decide.* Political education of the citizens has to embrace these and other similar questions that have bearing on the kind of society that we wish to build. It is only if the right to information is legislated and develops from precedent to precedent that rights and responsibilities will begin to go together. Currently we only worry about our rights but do not spare any thought for our responsibilities because we do not either care to know or have no means of knowing what is involved in making one policy choice rather than another. We, therefore, also do not know what kind of obligations go with different options that we can choose from. It is comparatively easy to mislead people about the consequences of a policy option. If a full knowledge about the implications is vouch-safed only to the chosen few, and the common folk, the unshaven lot, are ignored on the ground of their ignorance and irresponsibility, then the act of detonating a bomb can be represented as a major enhancement of the country's status without altering the existential reality of the weakness within.

Much of the common man's distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision-making processes. He remains ignorant and unaware of the processes which vitally affect his interests. Government procedures and regulations shrouded in a veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases because of the latter's snobbish attitude and combative style. The establishment of *right to information* should be promulgated and needs to be given real substance. In this regard, Government must assume a major responsibility and mobilize skills to ensure flow of such information to citizens. The traditional insistence on secrecy should be discarded.

In fact, we should have in place of an oath of secrecy, an *oath of transparency*. Administration should become transparent and participatory. Right to information can usher in many benefits, such as speedy disposal of cases, minimizing manipulative and dilatory tactics of the bureaucracy and, last but most importantly, putting a considerable check on graft and corruption.

Social Audit

Social audit of official working would be another way of developing accountability and answerability to the people. Without such an arrangement, neither performance nor delivery systems could be monitored or improved. Social audit by free and independent agencies could also lay the ground to harness resources of men and material to improve human conditions. This would also be a pre-condition to secure the over-riding objective of people's participation in Government and a means to evaluate the utility of the services on the touchstone of its performance.

It may also be worth considering that officials, before starting their career, take an oath of loyalty to the Constitution and swear to abide by the basic principles of good governance. This would give renewed sense of commitment by the Executives to the basic tenets of the Constitution and would prove important both substantially and symbolically. This might also clear their minds marvelously.

Changing Role of Government and Civil Service

During the course of these fifty-two years that our Constitution has been in operation, many new avenues of work and responsibility have come up which were not there earlier. Government was responsible for maintenance of general law and order, apart from implementing certain governmental programmes of economic development. Government cannot any longer confine itself to these only. The role of Government and civil servants has to undergo a striking change. If the new services and new avenues are to be harnessed and put in the service of the people, governance has to recast its responsibility to tap the wells of new avenues based on new technologies and new knowledge by employing expertise and agencies specially engaged to handle them. Indeed, many new professional services have since been harnessed. In fact, in relative terms, the importance of general service administration has receded into background and the need for technical professional services are in the forefront of developmental activities. The new services have indeed found the way up. But it is nevertheless imperative that their role, status and importance, *vis a vis* the IAS should be clearly spelt out, reformulated and given a meaningful and dignified status. Other non-IAS Secretariat Services which have many legitimate grievances should also be upgraded to play their role more effectively. General administration would remain important but its role has to be clearly redefined. Controversies between the new and the old services, and within the services, if allowed to develop, would become a formula for disaster.

Technocrats and experts have been employed in the past, but they had to play second fiddle to the generalists. But specialization has reached such levels of sophistication that a specialist is no longer going to be satisfied with a subservient position in the dispensation where changes in the field of science and technology are taking place at a bewildering speed.

All this calls for suitable legislative action, provision for which should clearly be laid down in the form of an Act for which a provision exists in article 312 and which has not yet been done (except that an Act related to IAS was promulgated).

Over the years several Committees were appointed to review the state of the administration. Their reports have spelt out measures to correct malpractices. Some of their recommendations, though sharp and sound, have failed to redeem the situation. While all efforts should be made to take full advantage of these reports and implement their recommendations, the malaise is far too deep to be set right by mere technical or administrative reforms. Much more is needed to be done. It is imperative to devolve power from the Centre to the periphery and modify and add some provisions to the existing constitutional arrangements to gear up the working of the Executive machinery by making it more accountable to the local Government.

Governmentalisation of Public Activities

The decline in quality of governance has been augmented by the excessive governmentalisation of all public activities. Autonomous public institutions like para-statals, banks, financial institutions, universities and even cooperatives were micro-managed resulting in a failure to achieve their declared objectives. Because of micro-management, they could not be held responsible or accountable. Every organisation had an *alibi* for failure.

It should be recognised that a mature democracy is a polyarchy of several institutions and not merely Government at various levels. Government's role is to get the laws enacted, provide for the framework of a category of public institutions and provisions to regulate them and protect the public from fraud. As stated above, an even more important role is to implement the laws fairly and effectively, but not to interfere and micro-manage.

Failure of Professional Groups

The decline in governance is no less due to the failure of professional groups (which are privileged sections of the society) to uphold standards. It is the duty of a member of each profession to uphold the *dharma* of that profession. It is the duty of each professional organization to prescribe and uphold standards and take action against the deviant. This is the whole object of setting up self-regulating organizations like the Institution of Engineers, Chartered Accountants, Medical Council, Council of Technical Education, Bar Council, etc. *But these organisations have been functioning more as lobbies for each profession.* Professions are instruments of public service. They and the perceived benefits of their members have become ends in themselves. For example, it has now come to the position in judicial administration that courts are for lawyers and not for the public. Every suggested reform of the judicial system is obstructed by strikes and agitations of lawyers. No low-cost alternative redressal system is allowed to come up. Even simplified systems incorporated in statutes regarding family courts, consumer protection, etc. are subverted and made complicated. Examples can be cited from every other profession.

Toning up the Judicial System

The delays in courts, the frequent adjournments, the lengthy trials and hearings, the insistence on special privileges and perks during service and after retirement, the subordinate corruption, etc. are well known ills afflicting the judicial arm. Of course, one has to record that the higher courts have in recognising public interest litigation become the last refuge of the harassed citizen and have done a magnificent job in drawing attention of the Executive to its failures. At the same time, in the High Courts, the writ jurisdiction has been used indiscriminately in the opposite direction resulting in protection of tax evaders, delinquent and inefficient civil servants, forest and works contractors and so on. In many cases, the public position has been faulted on technical grounds and the dishonest let off against public interest. The judicial system has to reconcile this paradox.

Globalisation and New Challenges

The advent of *globalisation* presents a new series of challenges to the administration. Activated by technological improvements, a new international relationship of our interests across issues and boundaries has come into being. Trade and financial developments have tightened to mesh off economic linkages across boundaries and regardless of preferences. The new state of affairs just cannot be wished away but must be engaged with. We should build up expertise to ensure that the interests of our country and the people are not overwhelmed by the forces of globalization and that our interests are properly served. We must evolve our foreign and domestic policies to control our future and serve our interests better. We cannot mortgage our interests nor can our security be left to the mercy of others. Government cannot abdicate its responsibility to influence international events and conditions to our advantage. Without the capacity to handle this new situation, we would be striking empty postures and would fail to seize the opportunity to develop in the context of globalization. The Executive of the State should learn to anticipate global developments and endow our policy with more knowledge-packed inputs to handle them to our advantage. At the same time, the aim has to be to tap the wellsprings of patriotism and give our people a sense of patriotic duty to harness the energy for economic and social development to spearhead programmes and develop pride and self-confidence. Mass political education and raising of political consciousness become imperative. This is the task to be performed by political parties. To remain actively involved in the new development programmes, the people would also need the support of well organized, well prepared, knowledge-oriented personnel and well thought out policies. Think-tanks and organized intellectual groups would have to be promoted through State funding, etc.

Restructuring India's Foreign Policy

The structural problems of foreign policies would be to constantly aim at making the best possible use of the international order and use it to our advantage. The use of force to impose the will of one country over another has become less potent. A totally different style of foreign policy has to be designed to attain the basic principles laid down in the Constitution. In the country's governance, the duality of foreign and domestic policy should end; rather, the two should not be antithetical. A serious effort is necessary to combine the two to recast the relationship and launch a creative initiative to achieve strategic partnerships the world over. Recasting of relations with other countries on the principles of inter-dependence so that domestic interests are furthered through it is the need of the hour. Our domestic interests cannot be put off. We must know how to implement our constitutional convictions in this regard. This calls for a thorough change in the form, working and structuring of foreign affairs mechanisms, including the Ministry of External Affairs, especially so when foreign policy implementation is now more than mere diplomacy.

Moral Values and Good Governance

There is widespread talk about erosion of moral values, loss of character and so forth. This kind of debate leads nowhere. There are no constitutional remedies against downright theft, cheating, chicanery, moral and political hypocrisy and deliberate falsehood. We cannot produce good people out of nothing and out of nowhere. The basic thing is to adopt the right policies in all spheres—education most of all, as also in economic and security spheres. The Government that fails to protect the life and property of citizens and their human rights and dignity can hardly face the challenges of prejudices, and people's failings. These are not matters of high metaphysics. There is a great deal of accumulated wisdom available on the subject; that it has not been used, is true. It stands to reason that its non-use must benefit some people. Very often, people who benefit may be found in the garb of rulers. The fundamental political question before the country is how can such people be unmasked and overthrown? Only organised political parties can answer this question. If they do not, societies may crumble. History offers many consolations but rarely if ever solace for the politically naive. Good governance warrants the ability to strike a balance between morality and pragmatism. Educational institutes, think-tanks and media should play an important role in this regard. Good governance also calls for good leadership. It is imperative that such a leadership should be sensitive to the needs of the people and should have knowledge of the alternatives which would meet their needs and possess the capacity to mobilize public opinion in their favour. Such a leadership would also guide political and civil executives to ensure good governance.

Restoring Stability in Parliamentary Government

One of the methods for restoring stability and cohesion of functioning to governance in a parliamentary Government is to empower the Prime Minister to emerge as an undisputed, strong leader in office. One of the ways of doing this (apart from other parliamentary reforms) is to empower the Prime Minister to dissolve the House when he thinks that the House has exhausted its mandate and an appeal to the country is called for. This will reinforce leadership in maintaining standards of integrity and public morality in the performance of the Ministers and members of Parliament and reduce the influence of special interests. This is really a matter of stating a political doctrine of high constitutional import and getting it ratified by the Supreme Court.

Strengthening the Office of the Lokpal

As and when the office of the Ombudsman, or in local parlance the Lokpal, comes into being, there is legitimate hope that the scope for veniality and gross, wilful negligence by political and administrative bosses will be appreciably reduced. However, the Lokpal cannot act effectively as a 'lone ranger'; his hands will have to be strengthened from all possible sources. One such unfailing source is the periodic mandatory reports of the Comptroller and Auditor General of India (C&AG). Hitherto, C&AG reports have not often been treated with the seriousness and sincerity they demand. At times, they are treated in a somewhat cavalier fashion. The preparation of the C&AG reports is understandably time-consuming and by the time they appear, the officials indicted for financial malpractices or some other grave lapses have retired or gone to pastures new and in the process the domain of accountability and answerability gets a severe jolt. The constitutional office of C&AG, therefore, needs some more teeth to expeditiously and effectively back individual malefactors and delinquent agencies.

Making Inquiry Commissions More Effective

Power not only corrupts but also inebriates. This attribute of power leads the State or its agencies, at times, to use unwarranted or excessive force or to indulge in some other reprehensible activity. Today, public opinion and that of the media can compel the State to institute a commission of enquiry in the event of some such act of commission by an official agency. However, an enquiry commission lumbers upon with its tortuous sittings and hearings and by the time its findings come out, the passion of the agitated public have almost cooled down, if not altogether vanished. Moreover, for lack of full judicial status to an enquiry commission equivalent to that of a judicial court, politicians, officials and other concerned persons do not take the summons and proceedings of the commission with appropriate seriousness and deference. And to top it, the findings of the commission are reluctantly acted upon, if at all, especially when the indicted party happens to be politicians or officials in power. An impartial enquiry commission, whenever deemed necessary, acts as a healthy check on the arbitrariness and high-handedness of the State and its agencies, provided, of course, it completes its findings without avoidable delay and the State is mandatorily obligated to act on its findings within a reasonable time-frame. Hopefully, the Constitution can take cognizance of this aspect so that enquiry commissions can become effective tools for initiating corrective or even punitive measures, wherever the Government or the administration exceeds its brief.

GOOD GOVERNANCE AND POLITICAL PROCESS IN INDIA

S.N. Mishra

Introduction

The search for good governance is a continuous and endless process. To ensure 'goodness' in governance and raising its level could be possible only when the aspirations of the people are taken care of and such aspirations are constantly articulated by all sections of the society. However, good governance may be articulated differently by different scholars and individuals. For Bentham, good governance means satisfaction of every kind and full of pleasure. To quote him, 'it is better to be a pig satisfied than to be a Socrates dissatisfied.' To put it differently, for Bentham, satisfaction is everything and, perhaps, rationality has no place in his thinking. J.S. Mill, however, makes a clear-cut difference between the rational and irrational. Criticising Bentham on rationality ground, he says, 'it is always better to be a Socrates dissatisfied than to be a pig satisfied'. Therefore, for J.S. Mill, good governance stands for rationality, individual freedom, liberty with checks and balances and transparency in governance.

Before Bentham and J.S. Mill, Hobbes, Locke and Rousseau treated State, as a result of social contract, synonymous with good governance. For Mahatma Gandhi, good governance means dignity of human being, value-based society, self-restraint, dignity of labour and an egalitarian society. Therefore, in India, during the entire tortuous course of the freedom struggle, self-government and good governance became synonymous. After Independence, the Preamble of our Constitution set forth the parameters for good governance.

Though the concept of good governance is envisaged in the Preamble of the Constitution, this goal has been elusive. It started with securing rights of the common man in the Constitution through the provisions of Fundamental Rights and the Directive Principles of State Policy. However, the guiding spirit, of course, has been the Preamble of the Constitution.

Good governance, however, is not a finished product; it is a dynamic concept. It encompasses fast changing political, social and economic milieu along with international environment and condition of operational governance. Hence, there is a need for periodic rethinking and even remodelling of the concept and institutions of governance. The widespread misgivings and apprehensions generated due to the gloomy scenario in the recent past about the future of democratic functioning of our governmental system, and challenges further posed by the rising influence of international organizations, have attracted greater attention of the academics, public administrators and the common citizenry to look into various facets of good governance afresh.[1]

Components of Good Governance

When we talk about governance, it encompasses in its fold: (i) political institutions within which management is exercised with a focus on how the democratic institutions function; (ii) the authority and working of the Judiciary; (iii) the administrative system and culture; (iv) the role of civil society; and (v) underlying socio-political dynamics which conditions the functioning of the above institutions[2].

When one examines the above-mentioned conditions, one finds that all the five areas influence the governance of a country. However, the vexing problem in regard to theoretical constructs arises again and that is the problem of prioritization of a process of governance reforms. Intuitively, one may argue that specific dynamics of each region of India assigns varied weights to each of these issues. Therefore, a common mosaic is required to develop a coherent and conceptual framework so as to enable us to study and spell out the determinants of good governance for the country. And as such when we talk about governance, it is itself an instrumental process designed to enable a society to realize certain objectives enshrined in the Constitution of the country. Therefore, without entering into an argument about the yardsticks to measure good governance, we should take the following facts into account.

Extent of Deprivation

This measure moves beyond the conventional measure of GDP growth or even the human development indicators to encompass the issues of poverty and distribution. An appropriate measure of good governance would thus appear to be the extent to which a society has eliminated poverty, broadened access to entitlements and provided the basis for a sustainable livelihood for all its citizens. Here, it must be emphasized that in putting deprivation at the centre of our concern, we recognize that persistence of poverty results as much from deficiencies of economic policies. And, therefore, it is the institutions of governance which, in turn, determine the implementation of developmental policies and influence its results.

Representativeness of Representative Institutions

It is accepted that ours is a representative Government whose basic postulates are free and fair periodic elections, both for the Parliament and the State Legislatures, as also for the decentralized institutions of governance. However, it is open to challenges. Right from Independence till date, by and large, it has been noticed that be it the Parliament or the State Legislatures and for that matter the local representative bodies, there appears to be evidence that people of affluence dominate elective institutions even after reservation of the seats for the deprived sections of the society. It is rare for the poor to be able to contest the elections, let alone get elected.

Since a large section of the population remains poor and the failure of the poor to be represented in representative bodies is a reality, this is perhaps one of the indicators of non-representativeness of our representative institutions. This may be seen as a failure of governance relating both to the working of the democratic institutions and to development policy. Therefore, the failure of governance permits such an inequitable distribution of entitlements that it effectively excludes the poor from participation in the Legislatures. Such an exclusive system of representation is certainly undemocratic and serves to perpetuate inequitable policies and institutions.

Decentralization of Governance

This yardstick looks at good governance in terms of how far the political as well as administrative powers have been decentralized. For this, we have to look into the process of decentralization, the nature of legislation, revenue resource and expenditure powers, as well as the nature and hierarchy of administration.

Realization of Basic and Fundamental Rights

If fundamental and basic rights of citizens are being sustained and protected and are seen as an end in itself as also an aspect of good governance, this suggests that India has been exposed to a process of usurpation of citizen's rights in the way of access to entitlements, health care, education, equality before the law and various freedoms.

However, large segments of our population live in want and remain exposed to the arbitrary exercise of bureaucratic and public power. Therefore, some measure will need to be provided, based on the agreed definition of what constitutes fundamental and basic rights as well as equality before the law, to serve as a measure of good governance.

Protection of Security of Life and Liberty

Good governance is judged on the basis of the extent to which security of life and liberty of our citizens is protected. This is a matter of concern because throughout the country the citizen is exposed to a life of insecurity. To a certain extent our Judiciary also has not been very effective in setting the system right, to ensure good governance[3].

The above five measures of good governance prepare the platform to inform all our subsequent analysis of the nature of public system in our country with particular reference to institutions of democracy. The central argument of this piece of research is that good governance depends upon the effective and representative character of our democratic institutions and enlightened citizens.

Political Parties and Good Governance

In the broader framework, for good governance, our specific concern is to examine the role and ethical values maintained by various political parties in the governance of the country. Such institutions are needed to give both voice and participation to the process of governance and to hold both the Legislature and the Executive accountable and finally to prepare the platform for good governance. If we define political process, it can be said that political process is a way out to sort out the means and to chart the way towards the goal. It is an index and an instrument of the dynamics of democracy through which qualitative changes occur. It is one of the critical indices by which one may attempt to measure as to how far democracy as a value for good governance has been internalized among the political elite and the masses. Thus, it constitutes the mechanism for communication, influence and control from grassroots upwards. The mechanism involve both political parties and voters—one for materializing the public welfare programmes and the other for institutionalizing the people's will[4].

The heartbeat of a democratic political system is largely regulated by the sound health of the political parties. Political parties not only channelise the political process during elections through nomination and campaign but also set forth the political goal and provide incentives to the citizens for political participation. The focus of this article is on analyzing as to what extent periodic elections to the Parliament and the State Legislatures have set forth the process of good governance on the right track; as to whether the emerging electoral trends are any indicator of stability and viability of our political system the *sine qua non* of good governance; as to whether elections reflect the institutionalization of citizens' will; to assess the extent to which our parliamentary system has stood the test of the time and has helped in good governance; and, finally, if the answer is in the negative, to examine the measures required to be adopted to enable our political system, to sustain the emerging challenges flowing from criminalisation of politics, liberalization of economy and erosion in administrative and judicial system. However, for the purpose of analysis our basic concern is limited to the nomination process of the candidates of different political parties and its overall impact on good governance.

Nomination Process of Candidates for Elections

Before analyzing the nomination process of the candidates for General Elections by various political parties, we may clarify that the selection of candidates by the parties is nomination and selection of candidates by the voters is election. Nomination is a supplementary but the most crucial process of election. If election is a competition among political parties, nomination process is a competition within the party amongst its members aspiring for contesting the election. One represents inter-party competition, the other stands for intra-party competition. Through this competition, the inherent tendencies and attitudes of political parties are highlighted to the citizens. Through the nomination process, political parties confine the choice of voters to the limited candidates and the motives behind the nomination of candidates pervade throughout the electoral fray, thereby affecting the working of parliamentary government and setting forth the agenda for good governance[5]. It not only determines the number, quality and ideology of candidates appearing at the hustings but also shapes the main contours of electoral fray. To be precise, the emerging trends of Indian parliamentary system are to a great extent an outcome of nomination politics. However, to understand its futuristic trends in our parliamentary system, we have to take a look at the past.

Since 1952, in three successive elections, values, ideology, commitment and integrity of the candidate ran supreme in the nomination process of various political parties. Irrespective of whether they were ruling or in the Opposition, all political parties authorized only those candidates to contest the elections whose party allegiance, loyalty and ideological commitment was beyond doubt. By and large, these candidates were involved in the freedom movement and had their own good image in the public life[6]. These committed and ideology based politicians, after their election to the respective State Legislatures and the Parliament, prepared a sound platform for good governance of the country which was praised even by learned authors and experts like Paul Appelby, Morris Jones, Bailey and others. During those days, the nomination process of the candidates used to start from the taluka level coming to district and State level and finally for the consideration of the party high command.

However, in the mid 60's, particularly after the death of Pandit Jawaharlal Nehru and with the emergence of coalition politics, ideology based nomination of candidates took a back seat, for the first time, which resulted in increasing interference by the central leadership and gradually denying the effectiveness of democratic functioning of political parties at the State level and below. So long as Nehru was alive, bossism could not come in the way of the democratic process of nomination of candidates of his party as he always tried to maintain harmony among different units of party organization. He gave due importance to constituency units in the selection of candidates and encouraged popular members in the electoral fray belonging to both the right and left wings of the party.[7]

During this period, the Opposition parties, in the absence of tough competition among the ticket seekers, gave tickets only to those candidates who had their own standing in the constituency as also in the national and State politics because of their clean image and social and political services, thus providing a solid base for good governance. This was the period during which two major progressive forces, the Socialist Party and Communist Party of India witnessed vertical splits in their ranks giving birth to the Praja Socialist Party and Socialist Party, Communist Party of India and Communist Party of India (Marxist), respectively. The Akhil Bharatiya Jana Sangh was also gaining ground during this period.

However, in the Fourth General Elections of 1967, the Congress Party witnessed internal quarrels and leaders of both the right and left wings of the party endeavoured to hold the high command in their own hands at the cost of party ideology and personal integrity and therefore the party organization was weakened and became dependent on faction and caste oriented provincial leadership.[8] On the other hand, the growing concern and anxiety of Opposition parties to oust the Congress from power prompted them to forge an anti-Congress alliance and absorb the Congress left-overs in their parties. As a result, the anti-Congress grand alliance deprived many competent party workers of tickets in their respective constituencies and strongholds. At the same time, the emerging rural elite also tried to spread their tentacles on faction-ridden and ideology-less political parties. Therefore, the party membership became either non-existent or dead, leaving the way wide open for authoritarian dictates from leading personalities and, ultimately, nomination of candidates virtually became a trial of strength among different personalities at the top.[9] As a result, *'leaving aside the party and national interest, legislators got motivated towards committing political sin of defection, re-defection and counter-defection,'* (emphasis added) and, therefore, the concept of strong Opposition and stable Government became a distant possibility, if not permanently, at least for the time being.

For a brief period, *i.e.* during 1971-77, the trend towards non-ideological membership, immense increase in the number of defectors and the emergence of Smt. Indira Gandhi as the unchallenged leader of the country provided scope for personalized politics as also politics based on caste, creed, communalism and regionalism. Therefore, during the 1971 elections, both the Congress and the Opposition parties nominated candidates based on individual dominance. In other words, those candidates who had proved their loyalties to the top leadership of the party were rewarded with party tickets. Thus, party allegiance and the ideological commitment of the candidates did not play any decisive role at the time of distribution of tickets. The electoral outcomes did not prove to be a good trend for good governance. And this trend later led to money bag politics and the use of muscle power.

In spite of the success of the *Nav Nirman* Movement in Gujarat and the J.P. Movement in Bihar as also the nightmare of emergency, the Opposition parties, though polarized at the time of the election, were entrenched in personalized politics. And, therefore, at the time of distribution of tickets, leaders became more important than the parties. The Janata Party which emerged in the wake of the emergency was an amalgamation of parties. In this context, J.K. Baral's case study rightly suggests that those who were more powerful or close to those who were powerful within the party, were beneficiaries of nomination politics at the cost of another who normally should have got the ticket.[10] The end result of the 1977 electoral battle had been highly unsatisfactory and *'the people's aspirations of good governance seemed belied'* (emphasis added). Perhaps the personalized politics within the Janata Party led to its downfall.

In the mid-term parliamentary elections of 1980, along with the other prevailing factors, nomination politics tilted towards encouraging family dominance in the political process of the country. Almost all the top leaders, with a few exceptions, successfully manipulated to reward their family members and close relatives with tickets without considering their ideological affinity and standing in politics.[11] Similarly, in the Assembly elections of 1980, the final arbitrators of ticket distribution managed to distribute the tickets in such a way that old bossism and factionalism could be thwarted giving way to some new equations and changes. *The Times of India* called it a generational change and "India's cultural revolution." Therefore, this time there was a marked departure from the usual pattern of selection of candidates as nobody could take nomination for granted. Nobody's entrenched claim seemed to have been recognized. Many of those who held seats in the dissolved House had been ignored for some reason or the other.[12]

According to political analysts, there was no real issue in the 1984 election. After all, 1984 by all accounts was supposed to be a very bad year for Smt. Gandhi's era of decisive leadership; it was, in a sense, coming to an end, and nomination politics in 1984 election did not set any new trend. The 1989 elections brought the end of the reformist process Rajiv Gandhi had initiated in the winter of 1984.[13]

If we look into the nomination strategies of the Opposition parties, it appears that during 1977-1989, occasionally they displayed rare unity with a one-to-one contest against the Congress in most of the constituencies. The Opposition appeared to be in an upbeat mood. The atmosphere, the faces, the vibes were all familiar and so was the challenge. The elections of 1989 too, could not set any positive trend for good governance by various political parties.

The mid-term elections of 1991 were fought on three major planks—the Congress played its old card of stability and development, the Left Front-Democratic Front combined played the card of social justice, whereas the B.J.P. raised the issue of the Ayodhya Mandir. This strategy was clearly reflected in the nomination of candidates for the elections to the Lok Sabha and the State Legislatures. The elections of 1996, 1998 and 1999 also set the same trend and criminalisation of politics and money and muscle power became the hot matter of debate at the time of elections.

Thus, looking into nomination process of political parties, in the historical perspectives, what appears to be the rising phenomena are: corruption not only in high places but in the whole of the body politic, institutional decay, politics of survival, personality cult, and erosion of the State. Unfortunately these trends are very dangerous so far as good governance is concerned. Here, we would like to mention that it is better only to use the word 'governance' than to use 'good governance'. To our mind, governance itself stands for everything, *i.e.* social harmony, corruption-free society, value-based politics, free and fair elections, committed bureaucracy, decentralization of power, transparency in governance, dissemination of knowledge, equity, neutrality of civil services, concern for the poorest of the poor, access to education, health, shelter, clothing and information to all, dignity of labour and finally enlightened citizens.

The politics of expediency and self survival in the nomination process of political parties have brought them to a stage where they have lost their homogeneous character and institutional norms. If casteism, communalism and regionalism have disrupted the value oriented and ideology based composition of political parties, induction of unscrupulous politicians has damaged their representative character. Political parties either in power or in Opposition face a common threat from special interest groups, thus making them incapable of harmonizing social conflicts; they have failed in harmonizing and integrating people's hopes and aspirations which is a pre-requisite of good governance.

The political parties, in nominating candidates right from the First General Election till date, have failed to set forth the process of parliamentary democracy on the right track. A sound mechanism of communication, influence and control from grass-root level upward is yet another pre-requisite of good governance, but the trends from various elections reflect that political parties have failed to develop such mechanism. At the same time, they have also failed in institutionalizing people's will. The emerging trend also does not indicate stability in the parliamentary system. The ticket-based patronization and personalized politics has almost destroyed the very *raison d'etre* of the elections and has left the political parties in the position of a by-stander, putting tremendous pressure on the political system itself which is not good for governance as a whole. In such a situation, all the political parties, national or regional, are required to build a cadre of theirs which should be ideologically committed and having a mission to serve the people and be honest to the core. Some legal provisions are also required to regulate the functioning of political parties and their cadre. In order to put a check on the criminalisation of politics, the law should also provide for a provision that no candidate, either convicted or being tried, is allowed to contest the election.

Finally, in order to strengthen the role of political parties, they should develop think tanks within their organizations to come up with alternative policy proposals to smoothen the process of governance.[14]

It has almost become an accepted fact that coalition politics has come to stay in India at least for the coming two decades. This experiment has succeeded in many Western countries and there is nothing wrong in it. However, the deficiency lies in the way we have worked it and part of the blame must be shared by both political parties and political leadership. The political parties have to take into account the inherent diversity of the country and at all cost integrate such diversities to the maximum satisfaction of all, which is the *sina qua non* for good governance.

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[1] Editorial, *Indian Journal of Public Administration,* Special Number on 'Towards Good Governance', Vol. XLIV, July-Sept. 1999, IIPA, New Delhi.

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[10] *Ibid.*

[11] *India Today,* 16-31 Dec., 1979, p.72.

[12] *Northern India Patrika,* 19 May, 1980, p.7.

[13] *India Today,* 19-30 Nov., 1989, p.46.

[14] Jain, R.B., *Review of the Working of the Indian Constitution: An Agenda for Reform of the Party System,* Paper presented at the General Body Meeting of IIPA Delhi Regional Branch, dated 26 Sept., 2000, p.7.

It has almost become an accepted fact that coalition politics has come to stay in India at least for the coming two decades. The experiment has succeeded in many Western countries and there is nothing wrong in it. However, the deficiency lies in the way we have worked it and part of the blame must be shared by both political parties and political leadership. The political parties have to take into account the inherent diversity of the country and, at all cost, integrate such diversities to the maximum satisfaction of all, which is the sine qua non for good governance.

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[1] Chaturvedi, T.N., Editorial, in *Indian Journal of Public Administration*, special number on 'Towards Good Governance', Vol. XLIV, July-Sept. 1998, IIPA, New Delhi.

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[6] Mishra and Mishra, op.cit., p.8.

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[8] Narayan, Jayaprakash, [illegible], 1977, p.55.

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[11] *India Today*, 15-31 Oct. 1999, p.22.

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PART VI : PARLIAMENT AND JUDICIARY

FIVE DECADES OF THE SUPREME COURT OF INDIA—ITS TRIALS AND TRIUMPHS

A.S. Anand

Introduction

India's Independence from British rule in 1947 was perhaps one of the most sublime events of the last century. In the period leading up to Independence and during the first several years of India's existence as an independent nation, a Constituent Assembly met to draft the nation's Constitution. India inherited a liberal legal ideology from the British legal system. The Constituent Assembly decided to retain and adopt for the Republic the basics of pre-Independence judicial system. The Constitution produced through that process was crafted to meet the particular needs of the Indian sub-continent. Instead of preserving a *status quo* caste based underclass, the founding fathers sought to create a fundamentally different, more egalitarian Indian society. This vision for post-British India is reflected in the Constitution's numerous provisions that mandate social change, such as those that abolish untouchability, prohibit discrimination on the basis of religion, race, caste, sex and place of birth and guarantee equality of opportunity.

First Sitting of the Supreme Court

The Supreme Court of India succeeded to the jurisdiction of the Federal Court and the Judicial Committee. At the Inaugural Sitting of the Supreme Court of India on 28 January 1950, the First Attorney General of India, Shri M.C. Setalvad in his Address referred to the *extent and nature* of the jurisdiction of the Supreme Court under the Constitution of India. Shri Setalvad said: "the jurisdiction and powers of this Court, in their nature and extent, are wider than those exercised by the highest Court of any country in the Commonwealth or by the Supreme Court of the United States". Analysing the task before the Judiciary, he said:

> *Your foremost task will be to interpret the Constitution* which is but a means of ordering the life of a progressive people. The Federal Court has already laid down that a Constitution is to be interpreted *in no narrow spirit...* The detailed

> enumeration of Fundamental Rights in the Constitution and the provisions which enable them to be reasonably restricted will need wise and discriminating decisions. *On the Court will fall the delicate and difficult task of ensuring to the citizen the enjoyment of his guaranteed rights consistently with the rights of society and the State.*

Shri Setalvad also expressed the hope that "this Court will play a great and singular role and establish itself in the consciousness of the Indian People".

In his response, the First Chief Justice of India, Justice Hari Lal J. Kania, said: "...The Constitution of India... has tried to provide for various contingencies, which can be reasonably thought of... different parts of the Constitution will act and react on each other and the Court will have to decide questions arising from such a situation. As you observed, *this Court will be called upon to discharge its duties as perhaps no other Court has so far been called upon to do...*" The Chief Justice went on to say that the Supreme Court would declare and interpret the law of the land in *"no spirit of formal or barren legalism"*.

Judicial Independence

The founding fathers, some of them being outstanding legal personages of their own times, in their wisdom, created the Supreme Court of India and the High Courts as constitutional courts with extensive powers of judicial review to enforce constitutional rights and Fundamental Rights and also to safeguard other rights flowing from various statutes or laws. The Constitution contains an elaborate mechanism to secure and protect independence of the Judiciary so as to allow the judges to exercise their constitutional obligations, without fear or favour by providing them security of tenure; procedure for removal by impeachment only, protection of salary, etc. Provisions giving powers of far reaching consequences were enacted in the Constitution *by the elected representatives of the people* keeping in view the role which the higher Judiciary was expected to play under the Constitution. The Constitution-makers obviously placed great confidence in the sagacity and wisdom of those who were to exercise such enormous powers. The Supreme Court, over the years, has evolved an indigenous jurisprudence suitable to its people and situations. However, the journey of the Supreme Court to its present position has not been without trials and tribulations.

Principle of Rule of Law

The machinery of justice in India has been greatly influenced by Rule of Law as a transcendental and paramount value over-seeing the exercise of all powers. Rule of Law is a principle of institutional morality and is meant to enable the law "to promote social good".

Rule of Law, according to the editors of Prof. De Smith's *Judicial Review of Administrative Action*, is a "principle of the greatest importance". They go on to say that "the scope of Rule of Law is broad. It has managed to justify—albeit not always explicitly — a great deal of specific content of judicial review, such as the requirement that laws as enacted by Parliament be faithfully executed by officials; that orders of courts be obeyed; that individuals wishing to enforce the law should have reasonable access to the courts; that no person should be condemned unheard; and that power should not be arbitrarily exercised."[1]

It is of the essence of the Rule of Law that every authority within the State, including the Executive Government, should consider itself bound by and obey the law and the courts test all actions by the standard of legality. The Supreme Court observed: "In our constitutional system, the central and most characteristic feature is the concept of the Rule of Law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court."[2]

Supreme Court and the Basic Structure Doctrine

It was suggested in the majority opinion in *Kesavananda Bharati*,[3] that "Rule of Law" and "Democracy" were amongst the "Basic Structures" of the Indian Constitution and not amenable to the amending process under article 368 of the Constitution.

One of the essential features of the democratic republic established under the Indian Constitution is division of powers between the three important wings of the State — the Parliament and State Legislatures, the Executive and the Judiciary. These three wings are expected to operate in their respective earmarked fields so that the democratic Governments both at the Centre and in the States may function for the welfare of the citizens. In the case of *Delhi Laws*[4], the Supreme Court noted the absence of specific provisions in the Constitutional document, exclusively vesting legislative powers in the Legislature and judicial powers in the Judiciary. Though the judges differed so widely as to the constitutional limits to delegation of legislative power, the majority opinion imported the "essence" of the doctrine of separation of powers and the doctrine of constitutional limitation and trust implicit in the constitutional scheme. In *Indira Gandhi's case*[5], distribution and separation of powers were treated as part of basic structure of India's Constitution.

The Supreme Court with an initial strength of seven judges in 1950 has traversed a long way to its Golden Jubilee with a present strength of 26 judges. It has determinedly endeavoured to ensure that men are ruled by law and not by caprice and that Rule of Law becomes the imposing and effective inhibition upon arbitrary power, thereby ensuring to the "citizen the enjoyment of his guaranteed rights consistently with the rights of the society and the State". "The major problem of human society", observed the Supreme Court of India, "is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license".[6]

Soon after the coming into force of the Constitution, the State embarked upon various agrarian reforms. The Supreme Court felt that in the bargain, the Fundamental Right of a citizen to hold and enjoy property under article 31 was being sacrificed. The Supreme Court held that the method of deprivation was irrelevant and that payment of compensation must be at the market value. There, thus, arose a conflict between the ideals of Fundamental Rights on the one hand and the socialistic ideals in the Directive Principles of State Policy and the policy of the ruling party on the other. Interference by the courts in implementing agrarian reforms was seriously resented to by the Executive and its view was shared by the Parliament which felt that the judges of the Supreme Court, in matters of land reform legislation, were trying to impose 'their personal philosophy' on the nation rather than 'accepting the national philosophy'.

Phase of Limited Amending Power

Judgment after judgment of the Supreme Court, mainly in the area of land reforms, were reversed by the Parliament by exercising its amending power under article 363. As Justice Hidayatullah pointed out in *I.C. Golak Nath's case*[7]: "in our county, amendments so far have been made only with the object of negativing Supreme Court decisions..."[8]

Faced with a situation where Parliament was amending the Constitution to neutralise judgment after judgment in *Golak Nath case*, the Supreme Court by a thin majority of six to five—on 27 February 1967—ruled that article 368 of the Constitution only provided for the procedure to amend the Constitution and was not to be construed as any independent course of power. It was opined that the amendments to the Constitution made by the Parliament could *not* encroach upon "invariable basic structure and if they did so, the amendments had to be declared void" by reason of article 13(2) of the Constitution. The Court, however, consciously adopted the principle of prospective overruling in that judgment and did not upset anything that had been done hitherto.

The Parliament was, however, once again quick to react and neutralise the effect of *Golak Nath case*. Article 368 as well as article 13 were amended by the Constitution (Twenty-fourth Amendment) Act in 1971 with effect from 5 November 1971. Even the marginal note to article 368 was amended!

It was only to be expected that the Twenty-fourth Constitution Amendment would not be spared a challenge in the courts. The challenge this time, however, was much broader. The seeds of the basic structure theory had already been sown in *Golak Nath*[9]. If the Constitution had been built on certain basic foundations or structure, would it be an exercise of the power of amendment to destroy the very foundation on which the Constitution was built? In other words, the power of amendment would not carry with it the power to abrogate or destroy the very organic document under which the Parliament derived the power of amendment.

The validity of the Twenty-fourth Amendment Act came up for consideration before the Supreme Court in *Kesavananda Bharati case* wherein a 13-judge Bench (7:6) rendered the judgment abridging the power of the Parliament to amend the Constitution so as to prevent uncontrolled exercise of the amendment power to *abrogate or destroy the basic structure* on which the very foundation of the Constitution was built. The theory was revolutionary and perhaps without any precedent anywhere in the world. The power of amendment of the Constitution was enunciated without any express provision in the Constitution limiting the powers of the Parliament. As to what constituted the basic structure was left to *its* determination and not to the determination of Parliament! It is, however, a part of history now that barely two days after the judgment in *Kesavananda Bharati's case* was delivered, on the retirement of Chief Justice Sikri, the Executive *struck a blow* to the independence of Judiciary. It abandoned the precedent of appointing the senior most puisne judge as the Chief Justice and superseding Justice Shelat, Justice Hegde and Justice Grover, who along with Chief Justice Sikri had formed the majority, appointed the fourth seniormost judge, Justice A.N. Ray, as the Chief Justice. As was expected, the three superseded judges resigned.

Later, many attempts were made to neutralise the ruling of the *Kesavananda Bharati's case*. A bench of 13 judges was constituted by Chief Justice A.N. Ray to reconsider the ruling but the attempt was rendered infructuous by the Advocates-General of the States declining to seek reconsideration.

The interpretation placed on article 368 by the thin majority was again sought to be removed by the Parliament by enacting the Forty-second Amendment to the Constitution asserting parliamentary supremacy. This

Amendment had far reaching consequences for the Judiciary. The Statement of Objects and Reasons to the Bill makes interesting reading. "The democratic institutions provided in the Constitution had been subjected to considerable stresses and strains and vested interests had been trying to promote their selfish ends to the great detriment of public good."

It is a well known 'secret' that the interlocutory order passed by the Supreme Court in *Indira Gandhi election case* precipitated the declaration of emergency on 25 June 1975. Articles 14, 19 and 21 were suspended and this gave rise to an acid test to which the Supreme Court of India was put when the fate of hundreds of political detenus, released by some of the High Courts in the country, came up for its consideration[10]. Except for the lone dissent of Justice H.R. Khanna, the remaining four judges constituting the bench of the Supreme Court declared that 'the very right to life and liberty was no more available to a person detained by the State during the emergency' and that no petition was maintainable under its writ jurisdiction even against *mala fide* acts of preventive detention by the State.

Justice Khanna must have known about the consequences, which his lone dissent would entail. When Chief Justice A.N. Ray retired on 29 January 1977, Justice Khanna, the next senior most judge in the line of succession to be the Chief Justice of India, was superseded and Justice M.H. Beg was appointed the Chief Justice of India. Justice Khanna, naturally, resigned. After the emergency was lifted, General Elections were held. The Congress Party led by Prime Minister, Smt. Indira Gandhi was defeated. The Janata Government came into power and straightaway neutralised many of the provisions of the Forty-second Amendment, which had seriously eroded the independence of the judicial wing of the State by the Forty-third and Forty-fourth Amendment Acts.

Supreme Court and Fundamental Rights

In the initial years, the functioning of the Supreme Court was marked by a preponderant mood of a cautious approach and adhering to a narrow doctrine towards interpretation of the constitutional provisions. It was, thus, that the noble exhortation of personal freedom in the Constitution that "no person shall be deprived of his life or personal liberty except according to the procedure established by law" was so interpreted in *A.K. Gopalan v. State of Madras*[11], as amounting to nothing more than "in accordance with the procedure prescribed by the Legislature" and the Court refused to infuse in that procedure, the principles of natural justice. The Court also arrived at the conclusion that article 21 of the Constitution excluded enjoyment of the freedom guaranteed under article 19. The judgment in *Gopalan*'s *case* was mainly based on the language of the Constitution and the requirements of the particular case before the Court.

The doctrine of exclusivity of Fundamental Rights as evolved in *Gopalan's case* was thrown overboard by the same Supreme Court, about two decades later in the *Bank Nationalisation case*[12] and four years later in 1974 in *Haradhan Saha*[13] *case,* wherein the Supreme Court judged the constitutionality of *preventive detention* with reference to article 19 also.

Twenty-eight years after the judgment in *Gopalan*'s *case,* the Supreme Court in *Maneka Gandhi's*[14] *case* pronounced that the procedure contemplated by article 21 of the Constitution must be "right, just and fair" and not arbitrary; it must pass the test of reasonableness and the procedure should be in conformity with the principles of natural justice and unless it was so, the requirement of article 21 would not be satisfied. Responding to the aspirations of the people and to ensure that the Fundamental Rights embodied in the Constitution have a real meaning for the citizens, in *F.C. Mullin v. Administrator, Union Territory of Delhi & others*[15], the Supreme Court observed: "The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings...Every act which offends against or impairs human dignity would constitute deprivation *pro tanto* of this right to live..."

In the post-1978 phase, the Supreme Court let go of its cautious approach. Article 21 came to be so interpreted as to protect a wider range of interests covering almost every field of human life[16]. The Supreme Court also expanded the right of minorities to maintain educational institutions[17]. The Court also made judicial intervention in cases concerning violation of human rights as an ongoing judicial process.

An enforceable right to compensation in case of torture, including 'mental torture' inflicted by the State or its agencies, was evolved and it now forms a part of public law regime in India. In many of its decisions, the Supreme Court of India started a new era of compensatory jurisprudence in Indian legal history. This newly forged weapon to help the torture victims has been sharpened in many of its decisions, like *Rudal Shah v. State of Bihar*[18], *Bhim Singh v. State of J&K*[19], *Saheli v. Commissioner of Police*[20]. In the case of *Nilabati Behera v. State*[21], the Court crystalised the judicial right to compensation, which was further reiterated in *D.K. Basu v. State of W.B.*[22] In *Nilabati Behera's case*[23], the Supreme Court said: "The Court, where the infringement of Fundamental Right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the Fundamental Right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience".

In *D.K. Basu*'s *case*, the Court went to the extent of saying that since compensation was being directed by the courts to be paid by the State held vicariously liable for the illegal acts of its officials, responsible for violation of Fundamental Rights of its citizens, the reservation to clause 9(5) of ICCPR by the Government of India had lost its relevance. In fact, the sentencing policy of the Judiciary in torture related cases against erring officials in India has become very strict. For an established breach of Fundamental Rights, compensation can now be awarded in the exercise of public law jurisdiction by the Supreme Court and High Courts, in addition to private law remedy for tortuous action and punishment to wrongdoer under criminal law.

Expanded Role of the Judiciary

The Supreme Court has, thus, been rendering judgments which are in tune and temper with the legislative intent while keeping pace with time and zealously protecting and developing the dimensions of the fundamental human rights of the citizens so as to make them meaningful and realistic. New contents are being provided to criminal justice, resulting in prison reforms and humanitarian treatment of prisoners and under-trials. The doctrine of equality has been employed to provide equal pay for equal work. Ecology, public health and environment are receiving attention at the hands of the courts. Exploitation of children, women and labour is receiving the concern it deserves. Liberalisation of the traditional concept of *locus standi,* to make access to the courts easy, was undertaken. The Supreme Court ruled that where judicial redress is sought in respect of a legal injury or a legal wrong suffered by persons, who by reason of their poverty or disability are unable to approach the Court for enforcement of their Fundamental Rights, any member of the public or organisation, acting *bona fide,* can maintain an action for judicial redress. A potent weapon was, thus, forged by the Supreme Court by way of *Public Interest Litigation* (PIL) also known as *social action litigation*. The decision of the Supreme Court in *S.P. Gupta's case*[24] represent a watershed in the development of

Public Interest Litigation. PIL is not treated as an 'adversarial litigation' but an opportunity to make basic human rights meaningful to the underprivileged, deprived and vulnerable sections of the society by ensuring that procedural technicalities do not come in the way of enforcement of Fundamental Rights. When the Supreme Court or the High Court is apprised of and is satisfied about gross violations of basic human rights it has refused to fold its hands in despair and look the other way. It was always a moment of triumph for the Court. No wonder, Lord Cooke of Thorndon in his lecture 'Final Appeal Courts: Some Comparisons' delivered in December 2001 at the Victoria University of Wellington described the Supreme Court of India as *"probably the most constructive Human Rights Court in the world"*. A great tribute indeed by a senior member of the House of Lords, a well known jurist and a great friend of India.

However, this expanded role of the Judiciary has been given the label of *'Judicial Activism'* by those who are critical of this expanded role. The main thrust of their criticism is that the Judiciary by its directives to the administration is usurping the functions of the Legislatures and of the Executive and is trying to run the country. What these critics of the Judiciary, however, overlook is that *judicial activism* generally encompasses an area of legislative vacuum in the field of human rights. In my opinion, judicial activism reinforces the strength of democracy and reaffirms the faith of the common man in the Rule of Law. *Judicial activism is, however, not an unguided missile. It has to be properly controlled and channelised.* It is, therefore, essential to remember that *judicial restraint* in the exercise of its functions is of equal importance for the Judiciary while discharging its judicial obligations under the Constitution. With a view to seeing that judicial activism does not become "judicial adventurism" and lead a judge going in pursuits of his own notions of justice, ignoring the limits of law, the bounds of his jurisdiction and the binding precedents, *the courts must act with proper restraint and self-discipline.* The Judiciary must realise that the courts should only create rights where they are certain that the right so created can be vindicated and order of the court can be enforced. The danger of the Judiciary creating a multiplicity of rights without the possibility of adequate enforcement is a real one and must be guarded against lest the Judiciary should become an institution of mere form bereft of substance. There are tangible limits to what the judicial process should attempt to accomplish and the Judiciary should resist the temptation to cross those limits. The decisions of the courts should be within the zone of juridical legitimacy. The Judiciary cannot give decisions that ignore authoritative sources and are inconsistent or incoherent with the larger body of law. The Judiciary can act only as an *alarm-clock* and not as a *time-keeper*.

Article 142 of the Constitution vests in the Supreme Court powers of very wide amplitude. The plenary jurisdiction under article 142 is the residual source of power, which the Supreme Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law. In *Supreme Court Bar Association v. Union of India and Another*[25] while dealing with the power under article 142 of the Constitution, speaking for the Constitution Bench, I cautioned:

> It, however, needs to be remembered that the powers conferred on the Court by article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly.

Conclusion

The Judiciary in India is conscious of the fact that in the ultimate analysis, the strength of the court must come from the legitimacy of its process and the public confidence in the sources of that legitimacy. The problem of delay on account of arrears has been a topic of discussion for decades. This drawback continues to remain a serious challenge facing the Indian Judiciary though steps are being taken to meet the situation[26].

The society has placed the Judiciary on a high pedestal and has lot of expectations from it. The present societal perception of this Court was summed up by the Vice-President of India, Shri Krishan Kant[27] in the following words:

> The Supreme Court today stands as a beacon of truth, faith and hope. Over fifty years ago when we started what Nehru called our "Tryst with Destiny", only a few could have foreseen that the Apex Court would become a driving force of that destiny. The history of democracy will note the contribution of the Indian Apex Court with honour. The record of the Indian Supreme Court and the superior Judiciary is an ennobling saga of a deep awareness of the nuances of law as well as a profound appreciation of the contemporary reality. What freedoms we have today, our liberties and our rights owe much to what the superior courts have done in the last fifty years in enforcing the Constitution in letter and spirit.

The Supreme Court of India has demonstrated that it is a pathfinder seeking discovery of ways and means to translate into workday realism, the constitutional philosophy of transforming the society into a just, free and equal society and is striving to meet the challenges facing it.

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[1] De Smith, Woolf and Jowell, *Judicial Review of Administrative Action*, Sweet & Maxwell, Fifth Edn., (second impression), 1998 (1.025).

[2] *Chief Settlement Commissioner, Punjab v. Om Prakash,* AIR 1969 SC 33.

[3] AIR 1973 SC 1461.

[4] The Ajmer-Merwara (Extension of Laws) Act, 1947 & The Part C States (Laws) Act, 1950, 1951 SCR 747.

[5] *Smt. Indira Nehru Gandhi v. Raj Narain,* AIR 1975 SC 2299.

[6] *Ibid.,* Para 318.

[7] *I.C. Golak Nath & Others v. State of Punjab and another* (1967) 2 SCR 762.

[8] *Ibid.* at p. 875 E.

[9] *Supra,* note 7.

[10] *A.D.M. Jabalpur & Others v. Shivakant Shukla & Others* (1976) 2 SCC 521.

[11] AIR 1950 SC 27.

[12] *R.C. Cooper v. Union of India,* AIR 1970 SC 564.

[13] *Haradhan Saha v. State of West Bengal & Others,* AIR 1974 SC 2154.

[14] *Maneka Gandhi v. Union of India* (1978) 2 SCR 621.

[15] (1981) 1 SCC 608.

[16] *Hussainara Khatoon v. Home Secretary, State of Bihar* (1980) 1, SCC 81 (Speedy trial).

Sunil Batra v. Delhi Administration (1978) 4 SCC 494 (Protection against solitary confinement).

Charles Sobhraj v. Superintendent, Central Jail, (1978) 4 SCC 104 (Not to be held in fetters).

T.V. Vatheeswaran v. State of Tamil Nadu (1983) 2 SCC 68 (The right against handcuffing).

M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 544 (Right to legal aid).

Nilabati Behera v. State of Orissa & Others (1993) 2 SCC 746 (The right against custodial violence & award of compensation).

D.K. Basu v. State of West Bengal (1997) 1 SCC 426 (The rights of the arrestee).

Vishakha v. State of Rajasthan (1997) 6 SCC 241 and *Apparel Export Promotion Council v. A.K. Chopra,* JT 1999 (1) SC 61 (The right of female employees not to be sexually harassed).

Shanti Star Builders v. N.K. Totame, (1990) 1 SCC 520 (Right to shelter).

Ms. Mohini Jain v. State of Karnataka (1992) 3 SCC 666 (Right to education).

Subhash Kumar v. State of Uttar Pradesh (1991) 1 SCC 598 (Right to clean and healthy environment).

[17] *The Ahmedabad St. Xavier's College Society & Another v. State of Gujarat* (1974) SCC 717 and *St. Stephen's College v. University of Delhi,* (1992) 1 SCC 558.

[18] AIR 1983 SC 1086.

[19] 1984 Supp. SCC 504.

[20] (1990) 1 SCC 422.

[21] (*Supra*)

[22] (*Supra*)

[23] (*Supra*)

[24] 1982 (2) SCR 365.

[25] (1998) 4 SCC 409.

[26] In the Supreme Court of India, through proper Court management and control, the case load has been brought to quite manageable limits. In 1990, there were 1,09,237 cases pending in the Supreme Court. Between 1990 and 31 December 1999 3,39,815 cases were instituted in the Supreme court. As on 1 May 2000, the total pendency was a mere 20,483. In 1999 itself, as many as 34,683 cases were instituted in the Supreme Court of India while 34,707 cases were disposed of in 1999, (1 January to 31 December 1999). In the High Courts 15,01,227 cases were instituted in 1998 and 13,72,270 cases were disposed of in spite of the fact that there were about 25 per cent of vacancies of judges.

[27] The inauguration of the Golden Jubilee Celebrations organised by Advocates-on-Record Association on 1 April 1999.

PARLIAMENT AND THE SUPREME COURT—CONFLICT AND CONFLUENCE

Harish N. Salve

Introduction

We, the people of India, gave unto ourselves the Constitution to secure to all citizens—Justice, Liberty, Equality and Fraternity. Following the example of the Irish Free State, we also enshrined in our Constitution the Directive Principles of State Policy, which would be fundamental in the governance of the country. In order to attain all this, we established two powerful institutions, a parliamentary form of Government based on the Westminster model, and a Judiciary which is, to some extent, unique. We adopted the system of parliamentary Executive in preference to the presidential system so as to ensure accountability of the Executive to Parliament and this "...was the result of the course which political struggle had taken in India".[1]

Having carved out certain stated subjects as fields for legislation by the Legislatures of the States, the Constitution empowered the Union Parliament to legislate on virtually any matter under the sun. Parliamentary legislative competence[2] extends to all legislation unless it directly trenches upon a field reserved for the States in List II of the Seventh Schedule to the Constitution. The power of the Union Executive extends to all subjects covered by its legislative power, the Executive being responsible to the Parliament alone. Even if the Indian Parliament does not enjoy powers as encompassing as the "Mother of all Parliaments", it is a well anointed sister!

Unlike the Legislature (*i.e.* division between the Union and State Legislatures), the Judiciary is unified, the highest court in every State and the Supreme Court of India being accorded a constitutional status. A discussion of the constitutional status of the Parliament *vis a vis* the Supreme Court of India, the working of these two institutions and their areas of confluence—and at times conflict—present a fascinating picture of democracy in action.

Parliamentary Supremacy : How Supreme is Parliament?

It is common to describe the Parliament as being supreme, and the description is not inapt, only that it has to be understood in the context in which it is used. The Parliament is a creature of the Constitution, which was, in turn, given by the people of this Republic to themselves. Yet, this does not make the Parliament a delegate—it is sovereign in its own right.

Dealing with the legal pedigree of Commonwealth Parliaments, the Privy Council held that the legislators are not a delegate of the people, but are as supreme and sovereign as the British Parliament itself.[3] None of the Parliaments established under a law made by the British Parliament were any the less sovereign merely because they had been established under a law—the source of their creation did not make them a delegate of the British Parliament. *A fortiori*, the Indian Parliament, which is the repository of sovereign power vested in it by the people, is the legal sovereign.

There is, however, a difference between the British Parliament and other Parliaments, and this is on account of the paramount law which governs these institutions. The British Parliament is referred to as the Mother of all Parliaments—this is because Britain has an unwritten Constitution (The British insist that they have an unwritten Constitution—and not that they do not have a written Constitution) in which there are no limitations upon Parliament—it is said that Parliament can do anything other than make a man a woman or *vice versa*. In that sense, the British Parliament is supreme. No law enacted by the British Parliament can be questioned in any court.[4] On the other hand, the Legislatures of other countries, which have a written Constitution, such as Canada and Australia, are subject to the limitations inherent in a system governed by a written Constitution. These may flow from either a division of legislative powers between different Legislatures (*i.e.* Provincial *versus* Federal), or on account of a Bill of Rights, or other constitutional limitations (*e.g.* freedom of inter-State trade).

Such Legislatures are no less sovereign or supreme—only that they must function subject to the constitutional limitations inherent in their system. "...There is no constitutional limitation upon the British Parliament from assigning its power where it will, but the Indian Parliament, *qua* legislative body, is fettered by a written Constitution and it does not possess the sovereign powers of the British Parliament..."[5]

The attribute of sovereignty flows from the fact that the law-making power, which belongs to the political sovereign (in a Republic, the people, and in a monarchy, the monarch) is conferred upon a body of people elected or selected for the purpose. Thus, subject to constitutional limitations, parliamentary policy and legislation is binding on all—no legal challenge can be presented to the wisdom (or lack of it) of a legislation or a policy formulated or approved by Parliament. The only recourse against such a measure is to the political sovereign, *i.e.* the people, and the only forum for correction of parliamentary blunders (other than the Parliament itself) is the court of public opinion.

So the concept of parliamentary supremacy is that of supremacy in a constitutional sense—no constitutional institution enjoys unbridled powers, for prerogatives are an anathema to democratic Constitutions.

Judicial Independence

In 1829, John Marshall exuberantly told those drafting a new Constitution for Virginia that a dependent Judiciary is "the greatest scourge an angry Heaven ever inflicted upon an ungrateful and sinning people."[6]

The Judiciary is, in one sense, the weakest limb of the State. In the words of Prof. Lawrence Tribe, "... lacking ultimate influence over either the sword or the purse, the federal Judiciary may truly be said to have neither force nor will but merely judgment and may thus be expected to remain the least dangerous branch. It was for this reason that the courts could be trusted to serve as an intermediate body between the people and the Legislature."[7]

The Constitution mandates that "All authorities, civil and judicial, in the territory of India, shall act in aid of the Supreme Court..."[8] Yet, the Court has no means to implement its will by force; what would those twenty-six wise men do if (perish the thought) on some unfortunate day, the authorities act in defiance of their edict? And yet this has never happened and is unlikely to ever really happen! The reason is, the fountainhead of the real power of the court is the public opinion.

The cutting edge of judicial power is in the knowledge (of those who may be tempted to defy judicial decrees) that any Government which shows anything less than the highest respect for the Judiciary will soon perish—such is the groundswell of support for the courts! Such faith could never be sustained were the court ever perceived to be partisan. The citizenry would never rise in support of a Judiciary, which was seen to be subservient to the political Executive. It is the perception of independence from any kind of extraneous pressures of the other branches of Government, the Legislature or the Executive, which is the *sine qua non* for a functioning public faith and confidence in the Judiciary.

The power to punish for its own contempt is founded on this premise. A criticism of the court is not contempt, nor is the mere defamation or libel of a judge in itself a contempt; it is only an act which tends to shake public faith in the institution of the Judiciary or brings it into ridicule that constitutes contempt. The human species could as much survive without breath as the Judiciary could without independence.

Our Constitution seeks to secure this independence by providing two safeguards, *viz.* the status of irremovability[9] and the guarantee that the terms and conditions of employment of a judge would not be varied during the tenure of his office[10].

Independence does not warrant, much less justify, imperiousness. The judges are as much subject to the law and Constitution and constitutional limitations as other organs of State—in fact more so! Their oath of office compels them to protect and preserve the Constitution which casts upon them the duty to respect and honour all other constitutional institutions such as the Legislatures, the Executive and other constitutional functionaries. It is for this reason that, in theory, judges only interpret the law and at best iron out the creases, but cannot and do not make law. They have no role in policy making, and a very limited role—again, at least in theory—in interfering in the policies of Executive Government. And even if they have the power of striking down laws made by the Legislatures, they cannot or (at least should not) sit in appeal over the wisdom of a law.

The constitutional courts are supposed to act as the fence which would prevent the intrusions by the Legislatures and the Executive upon the constitutional rights of the citizens; it is all the more necessary to ensure that they themselves do not transgress into areas reserved by the Constitution for the Legislatures. The fence should be careful never to eat the grass or even be perceived to do so! In this respect, the Indian Supreme Court has been by and large a role model of judicial restraint. The restraint with which the Court has exercised its power of judicial review of legislation has been responsible in large measure for the acceptability of the notion that judicial review is an essential feature of the Constitution, for the history of judicial review of legislation is such that it does not strike fear in the hearts of sensible lawmakers!

The greater the power wielded, the higher the need for sobriety in its exercise. Chief Justice Kania, the first Chief Justice of the Supreme Court, in his speech on the inaugural sitting of the Supreme Court of India summed it up by saying:

> It will be our endeavour to interpret the Constitution, not as a rigid body but as a living organism, having within itself the force and power of self-government. ... The Supreme Court, however, under the colour of interpretation, cannot alter or amend the law. The Supreme Court, an all India Court, will stand firm and aloof from party politics and political theories. It is unconcerned with the changes in the Government. The Court stands to administer the law for the time being in force, has goodwill and sympathy for all *but is allied to none.*

Parliamentary Supremacy and Judicial Independence : A Collaboration or a Conflict?

Theoretically, there can then be no conflict between parliamentary supremacy and judicial independence. Parliament makes laws and the Judiciary interprets the law and enforces it. Occasionally, it holds parliamentary law to be "unconstitutional", which should be no reason for conflict since Parliament could never be assumed to have intentionally transgressed constitutional limitations. Why then the conflicts? Because each of these premises is flawed in reality.

Parliament makes laws—for it is meant to! But do judges never make law? What about the entire body of common law evolved through judicial decisions? What about the entire body of administrative law and principles of judicial review? Lord Reid once said: "English judges deceived each other into thinking that they merely applied the law made by Parliament, that their job was only to interpret law, and not to make law or give law. This has changed. In considering how judges decide hard cases, we do not believe in fairy tales any more..."

Barring stray occasions, this phenomenon too has never really led to any consternation amongst the lawmakers—and it has, more often than not, come to the aid of the Executive Government by filling in gaps in the procedural laws, at the same time fine tuning the needs of the Government with the rights of the citizenry. In present times, where pressure of work is such that parliamentary debate now admits of an opportunity to focus upon the nuances of each legislation enacted, the activist court, which "develops" the law as it interprets, has become a vital source of law.

One area, which represents a growth of judges-made law, and which has on occasions been considered dangerously close to impinging upon parliamentary supremacy, is the area of administrative law. The conventional separation of powers envisages that the different organs of State—the Legislature, the Executive and the Judiciary—operate in their demarcated fields. While the American separation is far more rigid, with the Executive not being accountable to the Legislature, the Westminster model gives primacy to Parliament even in matters of formulation of policy and functioning of the Executive—the Executive department of Government being headed by a Minister who is a member of Parliament. Similarly, the functioning of statutory bodies and corporations as well as the delegates of legislative power is subject to varied forms of parliamentary control.

The expansion of governmental activity, the increasing degree of delegation of power, the evolution of the Welfare State, and the growth in legislative activity ultimately led to an increase in discretionary powers being conferred on statutory functionaries coupled with a dilution of the efficacy of parliamentary controls over the Executive. The courts stepped into fashion a body of law by which they could supplement efforts at supervision over the Executive. The principle distilled over the years is that judges review not the decision (which is a matter of policy) but the decision making process[11]. In this manner, they do not interfere with policy; they just make sure that its formulation is not tainted with illegality.

Sir William Wade, delivering the Hamlyn Lectures on "Constitutional Fundamentals" said: "...Twenty or thirty years ago, judges questioned about administrative law were prone to say that their function was merely to give effect to the will of Parliament and that they were not concerned with policy. In reality, they are up to their necks in policy, as they have been all through history, and nothing could illustrate this more vividly in our own time than the vicissitudes of administrative law..."[12]

The conceptual justification for judicial review of administrative action again lay in the premise that in exercising powers of judicial review, the judges were only ensuring the implementation of laws made by Parliament and restraining all Executive action contrary to parliamentary will. Thus was evolved the doctrine of *ultra vires*. Presumably, any action which was grossly unreasonable could not possibly have been intended by parliamentary law, and was therefore *ultra vires*. This justification has been criticized by modern jurists. Nicholas Bamforth, in his paper published on the subject, says "...while the *ultra vires* preserves the veneer that courts are obeying the will of Parliament, its flexibility ultimately robs the reasoning of any conviction..."

In this manner, the courts have increasingly scrutinised decision-making at all levels, interfering at times, in cases on the borderline of policy.

Judicial review is a very effective tool by which a degree of control is imposed on the vast powers exercised by the Executive in modern times. It has, far from eroding parliamentary supremacy, added to the credibility of the process of governance. A Minister defending a charge of arbitrariness or worse by saying that his decision has been upheld by the court is a fairly commonplace occurrence. Inevitably, in a situation like this, there are bound to be conflicts from time to time, but the overall effect of the growth of administrative law has furthered the cause of democracy for "...The courts (are) waiting with refined instruments of torture for Ministers and Departments... who (take) their public law obligations cavalierly...".[13]

Conflicts of the Past : Judicial Review of Legislation Relating to Property Rights

Another area which has given rise to conflict is judicial review of legislation. Imposing constitutional values upon popular Governments at times erupts in pitching the court against populist measures, and these conflicts have at times assumed serious dimensions. It has, in fact, led at times to question the very premise that courts are entitled to declare as unconstitutional, and thus devoid of legal sanction a law made by an elected Legislature.

The U.S. Supreme Court invented judicial review of legislation—the Indian Supreme Court was born with it. Yet, both these great institutions found themselves in a confrontation with the popular Government of the day over property rights. The U.S. Constitution does not contain provisions similar to articles 13 and 32 of the Indian Constitution, which would empower the court to enforce the Bill of Rights, and declare legislation contrary to the Bill of Rights unconstitutional. Yet, in *Marbury v. Madison*, Chief Justice Marshall 'discovered' the power to declare legislation unconstitutional. He found it embedded in the power to interpret and apply the Constitution. This explanation (found in his judgment) has been criticized. Sir William Wade has in fact questioned the basic premise that the court alone is competent to decide upon the constitutionality of statutes: "The premise of a written Constitution would not be disserved, and legislative power would not necessarily be unbounded, if Congress itself judged the constitutionality of its enactments."

In constitutional law, doubtful theories also tend to become axioms, if they are seen to be productive of public good over a period of time. So has it been with judicial review. As per Willis, in his treatise on the U.S. Constitution, judicial review was an adaptation of the colonial practice: "...one reason for the fact that the Supreme Court of the United States finally took this power to itself was the colonial practice. The colonial courts and on appeal the Privy Council of England had the power to declare legislative acts void if in conflict with colonial Charters. The colonists subsequently acquired the habit of colonial laws occasionally declared void by the courts..." This habit has grown to the extent that when the power of judicial review of constitutional amendments was sought to be negated by an amendment, the Supreme Court of India held that "it is the function of the judges, nay their duty, to pronounce upon the validity of laws. If Courts are totally deprived of that power, the Fundamental Rights conferred upon the people will become a mere adornment..."[14]

A conflict between legislative supremacy and the court has inevitably resulted when the court intervened with populist economic-proprietarian reform laws. The U.S. Supreme Court had a standoff with President Roosevelt's Government in the 1930's when the Hughes Court struck down, between 1934 and 1936, sixteen "New Deal legislations" which were meant to be a measure of economic reforms. President Roosevelt threatened to "pack" the court with judges who would sympathise with the Government's efforts to bring about economic reforms. While the attempt to "pack" the court failed, the message was clearly sent. The Supreme Court retracted from a generous use of the substantive due process clause, and showed the requisite deference to economic legislation, recognising the need for some "play in the joints" in this kind of legislation.

The controversy had an interesting aftermath; the Court was later accused of double standards! Henry J. Abraham and Barbara A. Perry in their book *Freedom and The Court* note that : "...the Court's willingness—indeed eagerness—to strike a much bolder blow for basic freedoms against governmental encroachment in the cultural or non-economic realm than in the economic-proprietarian one points to a judicial double standard that accords a closer, higher level of scrutiny to cases in the cultural/non-economic/ civil right/civil liberty area category than in the economic proprietarian one..."

The Indian Supreme Court also had its day in the battlefield over property rights. This battle, commenced by Pandit Nehru in 1951, was finally laid to rest two decades later by his daughter Smt. Indira Gandhi.[15]

On 10 September 1949, Prime Minister Pandit Jawaharlal Nehru moved an amendment to the proposed draft article 24 (which corresponded to article 31 of the Constitution) *inter alia* to change the principle on which compensation would be payable for large acquisitions of public property based on schemes for social reform and social engineering—as he said, on a basis that would be equitable to the individual and to the community. Moving this amendment, he spoke of the policy long advocated by the Indian National Congress for abolition of *zamindaris,* and added that: "No judge and no Supreme Court can make itself a third chamber. No Supreme Court and no Judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community... the Legislature must be supreme and must not be interfered with by the courts of law in such measures of social reform..."[16]

However, this amendment was considered unnecessary as the consensus was that even in draft article 24, the scope for judicial review in matters of compensation would be extremely limited.

Belying this hope, the Patna High Court struck down the Bihar Land Reforms Act, 1950 which sought to link compensation with the income of the recipient. Pandit Nehru promptly responded by bringing forth the First Amendment to the Constitution which placed land reform legislation (and all such laws as may be placed in the Ninth Schedule) beyond the pale of Fundamental Rights and thus beyond judicial review.

This amendment to the Constitution was itself challenged on the ground that Parliament could not amend any of the Fundamental Rights. This challenge was repelled by the Supreme Court in *Shankari Prasad's case*[17]—the power of Parliament to amend the Constitution was held wide enough to amend any of the Fundamental Rights.

The Supreme Court, in a string of cases, struck down various laws not expressly protected by article 31A or 31B and which, in its perception, did not provide for payment of sufficient compensation. These decisions of the Supreme Court were met by repeated amendments of the Constitution. The Constitution (Fourth Amendment) Act, 1955 which sought to exclude a challenge to the validity of the law on the ground of inadequacy of compensation was introduced to relieve the courts from "...the embarrassing necessity of having to interpret the clause in the manner which did not quite conform to the wishes or intentions and objects of the authors of the Constitution".

This amendment failed its purpose—the Supreme Court found a way out, holding that "...if the compensation is illusory or if the principles prescribed are irrelevant to the value of the property at about the time of its acquisition, it can be said that the Legislature committed a fraud on power and, therefore, the law is bad".[18]

The confrontation was aggravated in *Golak Nath's case*[19] in which the Supreme Court held that Parliament had no power to amend the

Fundamental Rights contained in Part III of the Constitution, and while doing so overruled its earlier judgments to the contrary. Realising the public mischief which would result by this startling view of the law, it used the American doctrine of "prospective overruling" thereby saving the validity of the amendments already upheld.

In 1969, banks were nationalized as a measure of socio-economic reforms; the Supreme Court invalidated the law on the ground that the compensation provided under it was illusory, and therefore was not compensation at all![20]

These two judgments paved the way for the Twenty-fourth Amendment (which sought to undo *Golak Nath's* judgment) and the Twenty-fifth Amendment which omitted the requirement to pay compensation from article 31 and inserted the requirement to pay an "amount". It also inserted article 31C which would give primacy to any law enacted to give effect to articles 39(b) and (c) over the Fundamental Rights.

The battle ended when the Supreme Court, in *Kesavananda Bharati v. State of Kerala*[21] overruled *Golak Nath* and held that Parliament could amend any part of the Constitution as long as it did not alter the "basic structure of the Constitution". The Twenty-fourth and Twenty-fifth Amendments were upheld, giving a decent burial to the right to property. Justice Khanna's judgment, which in one sense is the governing judgment, held that property is not a part of the basic structure. The aftermath of the controversy was worse—three of the seniormost judges of the Supreme Court (who held that the power to amend the Constitution was subject to inherent limitations) were superseded after Chief Justice Sikri's appointment, and so was Justice Khanna when the turn came for his appointment as the Chief Justice.

The epitaph on this controversy was the deletion of property rights from Part III of the Constitution. In the ultimate analysis, parliamentary supremacy was established, if at all, the Constitution stood impoverished by deletion of even the limited right to property which the founding fathers of the Constitution had envisaged.

"...A Supreme Court must at all costs, where it has freedom of choice, keep the law in touch with political realities. Rules which are too rigid to bend will probably break under political pressure..."[22] Only if the Supreme Court had taken heed of the political reality of economic reform in a country such as India, may be, some vestige of the right to property may have remained in the Constitution.

Conflicts of the Present

As in the case of the U.S. Supreme Court, so in India, while the Supreme Court did not accept that the Parliament had untrammelled right to amend the Constitution (as long as the procedure prescribed in article 368 was complied with), it upheld the Twenty-fourth and Twenty-fifth Amendments thereby clearly indicating that the battle over property rights was over. The court of the late 1970's then shifted its focus to human rights issues, prison reforms, etc. It expanded the concept of locus and gradually developed the jurisprudence of "public interest litigation". This shifted the attention of the court from economic issues to the Executive.

One significant area of development of the law was the area of judicial control of the activities of instrumentalities of State, *i.e.* public corporations and utilities, etc. The march of administrative law used as a tool to correct Executive apathy grew at a steady pace, extending to other areas such as environment law and finally to control the growing menace of corruption.

Some of the current decisions on matters of environment law have caused concerns of the Supreme Court taking judicial activism to an extent of impinging upon policy making. The concerns arise from the fact that the Court has, in its judgments post-1978, given a very wide interpretation to the right to life, which is now understood as encompassing the right to clothing, the right to a reasonable shelter and most of all, the right to a decent environment.[23] On this basis, the Court has intervened on a number of occasions so as to direct the Executive to take steps to ameliorate environmental pollution. Inevitably, some of these steps would involve policy choices and therein the potential for conflict. Also, sometimes such measures involve doing things perceived as unpopular such as moving industries out of cities, taking steps to clear unauthorized encroachments, etc.

The balancing of developmental needs with environmental protection has always been considered to be a matter for the policy makers. India is a party to various international treaties for protection of the environment, notably being the Stockholm Declaration and its follow up—the Rio Declaration. Treaties are not *per se* enforceable in courts, it is for the Parliament to make legislation in conformity with the treaties.

Immediately after the Stockholm Declaration, Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974. Later the Air Pollution (Prevention and Control) of Pollution Act, 1981; the Forest

Protection Act, 1980; and the Environment Protection Act, 1986 were enacted by the Parliament. While the Air and the Water (Prevention and Control of Pollution) Acts prescribed standards of emissions and discharge, and left the enforcement to the Pollution Control Boards, the Environment Protection Law on its plain language was "enabling", *i.e.*, it conferred power on the Central Government to take steps to deal not just with pollution but with any degradation of the environment. The Forest Protection Act made it mandatory for any authority (of the Union or the State) to seek permission of the Central Government before permitting any non-forest activity. None of these laws expressly enunciated any principle which would govern the grant or refusal of permission, nor did they create machinery by which ameliorative steps could be taken.

Drawing from these two Declarations and from the general principles of environmental law, the Supreme Court has carved out the principles which would govern policy as well as the exercise of discretion by the statutory authorities under these laws. It held that all permissions and sanctions (including sanctions to developmental projects) should be governed by the principle of "sustainable development". Secondly, in matters with potential environmental implications, the governing rule should be that of the "precautionary principle". Based on the international practice, the Court has also in some cases insisted upon an environmental cost benefit analysis as the basis for decision-making. In this manner, the Court has virtually decreed a policy that environmental concerns would have priority over developmental needs.

The courts have liberally interfered in matters of environmental concern, reviewing not just the decision-making process but subjecting the decisions themselves to 'deep scrutiny', rather than showing customary judicial deference to the wisdom of the Executive in matters of technical expertise. The Court has, on occasions, compelled the Government to appoint experts to guide the decision-making process in these matters, any departure from the opinion of the experts being viewed with grave suspicion.

Over a period of time, there has been some degree of discomfiture over the extent of judicial intervention in this branch of decision-making, since almost all developmental projects, including town planning, have environmental implications, and in that manner most policies and projects could fall within the ken of judicial scrutiny. However, this is one area where the Court has, despite criticism (most of it misplaced), continued steadfastly in developing the law and subjecting Executive action to increasingly greater degrees of scrutiny.

There are various reasons for the absence of any real confrontation on these issues between the Executive and Parliament on the one hand and the Judiciary on the other. One of the reasons for this phenomenon is a growing sense of disillusionment with popular Governments (almost a worldwide phenomenon) which has led the common Indian to look at the Judiciary as a panacea for all evils. A heightened public confidence in the Judiciary does tend to dampen criticism of its functioning—the lament that the Judiciary is delving into matters which constitutionally and traditionally are reserved for the Executive and the policy-makers, including the Parliament as the final authority on matters of policy, is met by the response that at least someone is doing something!

Another reason is that the political Executive has itself, on more than one occasion, found the calm portals of the Supreme Court a safe haven at times of public frenzy. The thorny problems arising out of the enforcement of the Mandal Commission Report were left to the Supreme Court to resolve in the hope that not only would the time taken in the judicial process calm the storm, but the final judicial verdict would be acceptable to all. In 1992-93, the fires of the Ayodhya controversy were doused by referring the entire matter to the Supreme Court. Later, the Parliament enacted a law of *status quo*—the Acquisition of Certain Area at Ayodhya Act in 1993 to provide for the acquisition of certain area at Ayodhya. In a number of similarly contentious issues, albeit of lesser dimensions, the Government has chosen to abide by a Court verdict rather than take the initiative to resolve the matter by appropriate legislation.

Having thus cast the Court in the mould of an arbiter of all contentious issues which have the potential of creating strife, the political Executive can hardly be heard to complain about the Judiciary expanding the horizons of judicial review.

None of this can, however, detract from the importance of the fact that the Judiciary has over the years become a powerful institution. The political establishment in the past decade has comprised of Governments with razor thin majorities or Coalition Governments, with the ruling party and the Opposition bitterly divided on various issues. A Parliament so constituted is hardly likely to confront the Judiciary over a perceived encroachment on its supremacy.

The closest the institutions have come to a confrontation is understandably on the issue of making the Chief Vigilance Commissioner supreme in matters of prevention of corruption. The Supreme Court in *Vineet Narain's case*[24] virtually indicated what kind of law should be made by Parliament and struck down the "Single Line directive" by which the Government (at the highest level) exercised a modicum of control over the initiation of criminal investigations into allegations of corruption by high officials. A Select Committee of Parliament was constituted to examine the Bill, and has tendered its report recently, some of the members reportedly being critical of the directions of the Supreme Court. The debate has just begun, its course and culmination promise not just some exciting moments but a vigorous debate, and a vigorous debate always enriches democracy.

A Golden Future

The Indian Constitution is a detailed document containing elaborate provisions in respect of almost every facet of the functioning of the organs of State, and yet the founding fathers found no need to include any express provision that any law made by Parliament must be obeyed by the court, nor did they expressly provide that the Supreme Court can declare any provision of law, including an amendment of the Constitution, as being unconstitutional. And yet, neither of these two propositions have ever been in doubt.

Chief Justice Marshall in *Marbury v. Madison* found the power of judicial review of legislation inherent in the duty of the Supreme Court to interpret and enforce the Constitution; the Indian courts found it implicit in their duty to enforce Fundamental Rights. "...The power of interpretation must be lodged somewhere, and the custom of the Constitution has lodged it in the judges. If they are to fulfil their function as judges, it could hardly be lodged elsewhere..."[25]

Similarly, parliamentary supremacy is in one sense derived from the traditional deference which the courts have shown towards the Legislature in the matter of legislation as well as policy-making. The duty to obey and enforce the laws made by Parliament (subject to their constitutional validity) without sitting in appeal over their wisdom, was inherent in the very nature of a court; there was no need to expressly say so in the Constitution. "...No statute can establish the Rule of Law that courts obey acts of Parliament because no statute can alter or abolish such a rule. Instead, the rule of judicial obedience to statutes is the ultimate political fact on which the constitutional system hangs, although it is also a rule of common law. In consequence, the relationship between the courts and Parliament is ultimately a political reality: legislation owes its authority to the rule of judicial obedience, rather than *vice versa*."[26]

This traditional cohesion between the institutions is the secret behind the strength of any democracy. And yet friction is inevitable. Governance of a nation of one billion people, poverty ridden, and plagued by illiteracy is no mean task. It is little surprise that in such a situation Parliament would at times resort to measures which may appear somewhat drastic and also slanted in favour of one or the other segment of society. The courts sometimes find these measures to be unduly invasive of the constitutional rights of those affected. These controversies are inevitable; they may change in form, and they may change in content, but are bound to arise when an appointed institution has to play constitutional umpire (which it must as a constitutional duty) over an elected Parliament.

Such controversies tend to arise more often than not, in causes of popular appeal. Judges, true to their robes, would never balk at the prospect of doing their constitutional duty only for fear of getting embroiled in political controversy; the theory that judges are above and beyond politics (not in its narrow but in its wider sense) is one of the myths of modern times. It is frequently said that judges should avoid getting into political questions; this can hardly be possible for judges who by their oath of office are committed to uphold the Constitution. "...The political question doctrine does not square with this fundamental tenet of our form of Government, it is at odds with our commitment to Constitution and Limited Government, to the Rule of Law monitored and enforced by judicial review..."[27]

In deciding such matters, courts would not be swayed by transitory sentiment for their role to construe and interpret the law and the Constitution, and, yet, while a constitutional court may insulate itself from the dust and din of politics, it has to take cognizance of public will and public good when it comes to *interpreting* or *enforcing* the Constitution. In the words of Sir William Wade, "...A Supreme Court must at all costs, where it has freedom of choice, keep the law in touch with political realities. Rules which are too rigid to bend will probably break under political pressure."[28]

Parliament and the Supreme Court have, as institutions, evolved considerably over the last half a century of their existence. Parliament has evolved and adapted to keep pace with the changing socio-political landscape within the nation and in the world at large. The Supreme Court has evolved and adapted itself towards becoming an institution which can not only discharge its conventional role of adjudicating disputes between citizens, and between the citizens and the State, but also play a more proactive role essentially in the interstices where legislative inactivity, Executive apathy or neurosis fails to fulfil constitutional aspirations, and to the extent it can address these problems within judicially manageable standards.

In this manner, the two institutions have worked—particularly in the last three decades—towards fulfilling the constitutional goal of aspiring to provide to the people of India—Justice, social economic and political. This is not to suggest that moments of trial would never be faced in the future; complete lack of friction between the institutions at times reflects lethargy in the system, and a vibrant system is bound to have its moments of tension. The secret lies in emerging stronger from each such challenge, each institution wiser and more finely tuned to attaining its constitutional destiny.

In the course of hearing of the *Minerva Mills case*, the eminent jurist Shri Nani Palkhivala was extremely critical of Parliament and its attempt at curtailing the Fundamental Rights of citizens. Responding to his eloquence, the then Attorney General Shri Lal Narain Sinha said words to the following effect[29] that as much as a few wrong judgments would hardly furnish justification for curtailing the powers of the court, so also a few undesirable laws should not be considered a reason for curtailing the powers of Parliament. It should always be remembered, that while undeniably the Supreme Court is the *sentinel que vie* of the Fundamental Rights and without the Supreme Court, the Constitution cannot survive, it has also to be remembered that without Parliament, the Supreme Court cannot survive. The truth is that each institution is equally important and has to do its duty by and under the Constitution.

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[1] Seervai, H.M., *Constitutional Law of India* (First edn.).

[2] As interpreted by the Supreme Court in *Dhillon's case*, 1972(2) SCR 33

[3] *R. v. Burah* (51. A. 178).

[4] The European Community law, however, has somewhat changed this position—although British Courts cannot declare laws contrary to European Union laws as unconstitutional, they can only make a declaration of incompatibility.

[5] In Re. *Delhi Laws Acts*, 1951 SCR 747.

[6] In Carrington, Paul D., "Restoring Vitality to State and Local Politics by Correcting the Excessive Independence of the Supreme Court", *Alabama Law Review*, Winter, 1999, *50 Ala. L. Rev. 397*

[7] Lawrence, Tribe, *American Constitutional Law* (Second edn.), p. 12.

[8] Article 144 of the Constitution of India.

[9] As a departure from the general principle that the power to appoint generally includes the power to terminate the appointment of judges of the High Court and Supreme Court can only be removed by following the process of impeachment.

[10] Provisos to articles 125(2) and 221(2), respectively.

[11] *Tata Cellular's case*, 1994(6) SCC 65.

[12] Wade, Sir William, *"Constitutional Fundamentals"*—Hamlyn Lectures (32nd Series).

[13] Sedley, Sir Stephen, *The Sound of Silence: Constitutional Law without a Constitution*, (1994) 110 L.Q.R. 270

[14] *Minerva Mills v. Union*, 1980 (3) SCC 625.

[15] The Twenty-fifth Amendment substituted the word "compensation" with "amount" and the Forty-second Amendment inserted article 31C which initially extinguished, for all practical purposes, the right to property.

[16] *Constituent Assembly Debates*, Vol. VII, p. 930.

[17] 1952 SCR 89.

[18] *Vajravelu's case*—AIR 1965 SC 1017 at 1024-5.

[19] 1967 (2) SCR 762

[20] *R.C. Cooper v. Union*, 1970 (3) SCR 530.

[21] 1973 Supp. SCR 1

[22] *Public Law in Britain and India* (*M.K. Nambyar Lectures* by Sir William Wade)

[23] 1990 (1) SCC 520, 1996 (3) SCC 212.

[24] 1998 (1) SCC 226.

[25] Cardozo, Benjamin, *Nature of the Judicial Process* (Associate Justice of the U.S. Supreme Court.)

[26] Bamford Nicholas, *Administrative Law.*

[27] "Mexico's Priority or Political Question: A Response", Henkin, 101 *Harvard Law Review* 524, at 529.

[28] *ibid.*, note 16

[29] From the notes maintained by the author.

PARLIAMENTARY SUPREMACY AND JUDICIAL INDEPENDENCE

H.R. Bhardwaj

Introduction

The Constitution of India is a unique document, encompassing as it does some noble ideals enshrined in the Constitutions of U.K., USA, Canada and Ireland. While discussing the topic parliamentary supremacy and judicial independence in India, it would be obvious to refer to foreign precedents—historical, political and judicial—to discover the true nature of powers and functions of the three organs of the State. It must also be remembered what Chief Justice Holmes of the United States of America said: "The provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital, not formal; it is to be gathered not simply by taking the words and dictionary, but by considering their origin and the line of their growth."[1]

Constituent Assembly at Work

The Indian Independence Act, 1947 conferred on the Constituent Assembly the power to frame a Constitution. The Indian Constitution adopted the system of parliamentary Government in preference to the presidential system of the United States of America. It embodies the Cabinet system of Government on the British model wherein the position of the President of India corresponds to that of the British Queen who acts on the advice of the Council of Ministers. The ethos of the Indian Constitution can be traced to the Objectives Resolution moved by the first Prime Minister of India, Pt. Jawaharlal Nehru in the Constituent Assembly. The Resolution, *inter alia,* said:

> 'Wherein all powers and authority of the sovereign, Independent India, its constituent parts and organs of Government, are derived from the people; and

> Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity and before the law; freedom of thought, expression, belief, worship, vocation, association and action, subject to law and public morality; and
>
> Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
>
> Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and law of civilised nations; and
>
> This ancient land attains its rightful and honourable place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

Pt. Nehru's memorable speech on the mid-night of 14-15 August 1947, *Tryst with Destiny,* called upon everyone assembled in the Constituent Assembly to dedicate to the service of the nation. He spoke:

> Long years ago, we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps India will awake to life and freedom. A moment comes, but comes rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity.

Constitutional Provisions

The Preamble to the Constitution, as it stood before the Forty-second Amendment, stated that India was constituted into a Sovereign, Democratic Republic. The Preamble asserts the people's resolve to secure to all citizens Justice—social, economic and political. The Constitution was intended to serve as an instrument of social justice. The Preamble was amended and the words 'Socialist' and 'Secular' were also added through the Forty-second Amendment Act to lay more emphasis on these vital principles in the governance of the State.

Fundamental Rights and Directive Principles

Our founding fathers borrowed the Directive Principles of State Policy in the Constitution from Ireland. Chapter III on 'Fundamental Rights' in the Indian Constitution resembles the Bill of Rights of the Constitution of

U.S.A. They confer certain civil rights and freedoms like right to equality, right to life and liberty, right to freedom of speech and expression and conscience and others. They are enforceable in a court of law. Article 32 of the Constitution confers another fundamental right to move the Supreme Court by appropriate proceedings for protection and enforcement of the Fundamental Rights. The Directive Principles of State Policy enshrined in Part IV of the Constitution are the guiding principles in that they declare that the State shall endeavour to prevent concentration of wealth in a few hands and distribute the ownership and control of the material resources to subserve the common good. The Directive Principles of State Policy are fundamental in the governance of the country. The Fundamental Rights and the Directive Principles of State Policy together constitute the core commitment for social revolution. They are the twin formula for achieving social revolution. Therefore, the Indian Constitution functions on a balanced approach between Part III and Part IV in order to secure harmony between them. The Supreme Court has, from the Directive Principles, tried to expand the ambit and reach of the Fundamental Rights and to make them meaningful to the large masses of people in the country.

Separation of Powers

The Constitution of India established Rule of Law in the country. It became the supreme law of the land. The powers of the Union and the States as well as the three organs of State are clearly demarcated. Each organ of the State, namely, the Legislature, the Executive and the Judiciary is expected to function within its own sphere without encroaching upon the areas allotted to others. The Legislature and Executive are the political wings of the State. The President of India acts on the advice of the Council of Ministers. The Parliament of India occupies a predominant position in legislation and controls the Executive in many ways; for instance, the direct responsibility of the Council of Ministers to the Parliament enforced through the defeat of the Government in the Lok Sabha, general control over the policies and actions of the Executive and control over the purse of the nation. The Executive initiates legislations but they need the approval of the Parliament and assent of the President in order to become law. The Judiciary is independent of the Legislature and the Executive. The power of Judiciary assumes great significance in relation to the Parliament. The Judiciary has powers to interpret legislation passed by Parliament and give meaning to them, to declare a law unconstitutional and to invalidate a constitutional amendment.

Judicial Review in U.S.A.

The scope and extent of power of judicial review enjoyed by the courts has been a subject of wide debate in many parts of the world. The founding fathers of the Constitution of the United States of America rejected the parliamentary system of Government for historic reasons and adopted a federal system under the President. The House of Representatives and the Senate constituted the Congress, with the Supreme Court of the United States as the Apex Court. The Executive authority of the United States vests in the President who is independent of the Legislature and not responsible to it. The Constitution of the United States of America, as interpreted by the Apex Court, has a due process clause and follows the doctrine of separation of powers within the Government itself, in order that each branch might act as a check on the other. In the words of Lord Bryce: "No feature of the Government of the United States has awakened so much curiosity in the European mind, caused so much discussion, received so much admiration, and has been more frequently misunderstood, than the duties assigned to the Supreme Court and the functions which it discharges in guiding the Ark of the Constitution.[2]

Chief Justice, John Marshall, the greatest judge of the United States, by his judgment in *Marbury v. Madison*[3], established that the power of judicial review has the power to strike down laws enacted by the Congress or the States and to declare official Government action unconstitutional. In the above mentioned case, after elaborating the principles of Magna Carta, the U.S. Supreme Court said, 'The good sense of mankind has at length settled down to this that they were intended to secure the individual from the arbitrary exercise of powers of Government.' The scope of judicial review is further enlarged if the Constitution lays down an exhaustive scheme of distribution of legislative powers between the federal and regional Governments. The hostility of President Jefferson towards the U.S. Supreme Court, particularly to Chief Justice Marshall, was primarily on account of his strong judicial philosophy. He went to the extent of commenting: "to consider judges as the ultimate arbiters of all constitutional questions... would place us under the despotism of an oligarchy".[4]

The horizon of judicial review has been expanding during the later two centuries in the United States of America. The conflict between the President and the Supreme Court of the United States became a historic event when, during 1935-36, the Supreme Court struck down socio-economic measures almost wrecking President F.D. Roosevelt's 'New Deal'. After a resounding victory in the 1936 elections, President Roosevelt expressed serious concern in favour of the economically weaker sections of the American society. He said that 'the test of our progress is not whether we add more to the abundance of those who have much, it is whether we provide enough for those who have too little'. After his inaugural ceremonies, he remarked: "When the Chief Justice read me the oath and came to words 'support the Constitution of the United States' I felt like saying: yes, but it is the Constitution of United States as I understand it, flexible enough to meet any problem of democracy—not the kind of Constitution your Court has raised up as a barrier to progress and democracy".

President Roosevelt expressed his intentions to pack the Court by adding more judges so that he could get a majority to support his 'New Deal'. His message to the Congress makes an interesting reading: "Modern complexities call also for a constant infusion of new blood in the courts, just as it is needed in executive functions of the Government and in private business... older men, assuming that the scene is the same as it was in the past, cease to explore or inquire into the present or the future."[5]

It was a clear signal that conservatives in the Supreme Court were blocking his efforts to introduce economic reforms by democratic means and younger judges were needed to usher in reforms. Senator Wheeler led the attack against the move of the President and alleged that it would convert the Supreme Court from a constitutional court to a political court and a weapon to help the Executive. There was a prolonged and open divide between the Senators. In the meantime, Chief Justice Charles Evans Hughes was of the view that the Court could dispose of its business with the existing strength and there was no need to appoint additional judges. He termed the move to appoint more judges as a serious loss of prestige of the Court. In a case involving minimum wages, Justice O.J. Roberts decided to vote with Chief Justice Hughes and three liberal judges holding the law constitutionally valid by a majority of five to four. The judgment validated a measure regulating labour relations, considered to be a part of the 'New Deal'. The President dropped his plan to appoint more judges to the Supreme Court and the strength remained at nine. It reminds us of the famous saying that a stitch in time saves nine. Chief Justice Hughes and his brother judges not only saved the prestige of the Court but also refuted the oft-repeated allegation of the Executive that it was obstructing the economic package. The rationale of separation of powers has been highly influential in the development of American constitutionalism.

The British Experience

Blackstone spelt out the doctrine of judicial independence in his commentaries and insisted that there had to be judicial independence to protect the judges' law making role, particularly in the House of Lords. Prime Minister Winston Churchill, speaking in the House of Commons, said: "The principle of complete independence of Judiciary from the Executive is the foundation of many things in our island of life. The judge has not only to do justice between man and man; he also has to do justice between the citizen and the State. He has to ensure that administration conform with law, and adjudicate upon legality of the Executive of its powers." Lord Denning was a great supporter of the power of judicial review and said:

> To my mind, judges are the guardians of our Constitution here just as they are in the United States. The only difference is that our Constitution is unwritten. Theirs is written. The judges can or, at any rate, should be able to pronounce on the validity of these conventions. They should be able to interfere if they are misused or abused.
>
> The rule in the United States is not contained in their Constitution itself, it is judgment made rule. It was stated by Chief Justice Marshall and later on by Charles Evans Hughes, the tenth Chief Justice, that 'we are under a Constitution, but the Constitution is what the judges say it is and Judiciary is the safeguard of our liberty and our property under the Constitution.

Judicial Independence

According to Sir Anthony Mason, Chief Justice of Australia, judicial independence is not a privilege enjoyed by judges, although judges sometimes mistakenly encourage that notion by invoking the privilege as it were their own. Judicial independence is a privilege of, and a protection for, the people. It is the fundamental element in our democracy, all the more so now that a citizen's rights against the State are of greater value than his or her rights against another citizen. Judicial independence has developed into a set of institutions that assure that judges decide according to law, rather than according to their own whims or to the will of others, including other branches of the Government. The components of judicial independence comprise the constitutional protections that judges enjoy such as the independent administration of the Judiciary by the Judiciary; judicial authority over the misconduct of judges; the manner in which conflicts of interest are addressed; and the assurance of effective judicial decisions. They enjoy security of tenure and pay and perks. These components combine to assure an independent Judiciary that is the basis for a society in which people and the Government behave according to the rules of law. The Executive cannot remove them from office. A motion of impeachment has to be passed in both the Houses of Parliament for proven charge of misbehaviour for their removal from office.

Parliament and the Judiciary

Pt. Nehru, the first Prime Minister of India, intended that the Parliament of India should serve as a vehicle of social change and expected that the Judiciary would not create obstacles in this task. During the course of his speech in the Constituent Assembly on 10 September 1949, he said: "We will honour our pledge within limits. No judge, no Supreme Court can make itself a third chamber. No Supreme Court and no Judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there, it can point out." However, it goes to the credit of Pt. Nehru that he firmly believed in the independence of the Judiciary. Intervening in the debates of the Constituent Assembly on the appointment of judges, he said: "It is important that these judges should not only be first rate, but should be acknowledged to be first in the country and of the highest integrity, if necessary, people who can stand up against the Executive and whoever may come in their way." The Nehru era can be termed as an era of the supremacy of Indian Parliament and independence of Judiciary. He asserted the supremacy of legislative powers of the Parliament to fulfil the promises made to the people of India during the freedom struggle, without in any way undermining the independence of the Judiciary.

The tussle for parliamentary supremacy and the power of the Judiciary started when the Patna High Court struck down the Bihar Land Reforms Act, 1950. As a result thereof, Pt. Nehru approached the Parliament to pass the Constitution (First Amendment) Bill, 1951 to wipe off the effect of the judicial verdict. The validity of the First Amendment was challenged in *Shankari Prasad's case*[6] before the Supreme Court on various grounds. The Supreme Court upheld Parliament's power to amend the Constitution, including its power to amend Fundamental Rights. The Supreme Court held that though a constitutional amendment was law, there was clear distinction between legislative power and the constituent power of Parliament. The Constitution (Fourth Amendment) Bill, 1955 was passed amending some Fundamental Rights, but was not challenged. However, *in Sajjan Singh's case,*[7] the petitioner challenged the Constitution (Seventeenth Amendment) Act, 1964 not on the ground that Parliament had no right to amend the Constitution, but the ground of challenge was that the amendment fell within the proviso to article 368 and the requirements of the proviso had not been complied with. Relying upon the law laid down in *Shankari Prasad's case,* the Supreme Court unanimously dismissed the challenge, but was divided 3:2 on the question whether the amendment met the requirement of proviso to article 368. The position changed significantly by the decision in *Golak Nath's case*[8]. On account of the minority view held by Hidayatullah and Mudholkar JJ, in *Shankari Prasad's* case the Constitution (Seventeenth Amendment) Act was challenged again in *Golak Nath's case;* a bench of 11 judges was constituted to reconsider the decision in *Sajjan Singh's case.* The Supreme Court of India, by a majority of 6:5, overruled *Shankari Prasad's case* and held that Parliament had no power to amend the Fundamental Rights. Subba Rao C.J. held that article 368 contained only the procedure for amendment, the power to amend being located in the residuary power of legislation.

A public debate ensued on the powers of the Parliament after the views expressed by the majority of judges in *Golak Nath's case,* particularly after the verdict of the Supreme Court in the *Bank Nationalisation case* and the *Privy Purses case* going against the Government. The Prime Minister, Smt. Indira Gandhi decided to make it an election issue and obtain the people's verdict on the supremacy of the Parliament in the General Elections of 1971. Immediately after the electoral victory, the Parliament passed the Constitution (Twenty-fourth) and (Twenty-fifth) Amendment Acts. The first Act amended article 31 and, by inserting article 31-C, provided that if any law is passed in securing the principles specified in clause (b) or clause (c) of article 39, it shall not be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by articles 14, 19 or 31 and added that no law containing a declaration that it is passed for giving effect to such policy shall be called in to question in any court on the ground that it does not give effect to such policy. A similar provision was made by the proviso in regard to the laws passed by the State Legislatures.

The validity of these two Amendment Acts was challenged before the Supreme Court in *Kesavananda Bharati's case,*[9] heard by the full Court consisting of 13 judges. By a majority of 7:6, the Supreme Court decided that though the Constitution Amendment Acts under challenge were valid, the second part of article 31-C, which made the legislative declaration in regard to the object or the policy of any impugned law final, was invalid. It was also held that Parliament could amend the Constitution but not so far as to alter or affect the basic feature. The law as it stands today is that the power of judicial review is a basic feature of the Constitution and cannot be taken away by amending the Constitution.

Conclusion

In conclusion, it may be stated that in a democratic society, the Parliament is the supreme law making body of the country. The Parliament of India is the nerve centre of our polity. During the last fifty years, it has been witness to many ups and downs in the nation's life, but as an institution, it has sustained democracy in its purest form. It has succeeded in keeping the country united and strong. It has energised the nation as it stands today. It may be added here that the success of an institution like Parliament depends upon the men who occupy the seats in the Houses.

Parliament is the master of its own functions and enjoys certain privileges so that it can discharge its parliamentary functions independently and without fear. It has powers to punish for its own contempt. No judicial proceedings lie for any speech made or vote given in the Parliament or any of its Committees. Justices of the Court are not the architects of policy. They can nullify policies of the Executive if they are arbitrary and contrary to public interest. In a nation's life, vital domestic issues arise which need adjudication, which is the exclusive domain of the courts. No other limb of the State can surpass or usurp this power of the Judiciary. In order to maintain the independence of the Judiciary, the Parliament does not discuss the conduct of judges during its proceedings. In the final analysis, it may be said that the Parliament and the Judiciary both have followed the principle that neither of the three Constitutionally separate organs of State can, according to the basic scheme of our Constitution today, leap outside the boundaries assigned, sphere or orbit of authority into that of others. This is the logical and natural meaning of the principle of supremacy of the Constitution.

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[1] *Gompers v. U.S.* (1914) 233 U.S. 604 (610).

[2] Bryce, James, *The American Commonwealth,* Vol. 242, New York; Macmillan, 1931.

[3] *Marbury v. Madison,* U.S. 1 Cranch 157 (1803).

[4] Jefferson to Jarvis, 28 September 1820, Ford, ed. *Writings,* Vol.162.

[5] Roosevelt, Franklin, *Rendezvous with Destiny,* Ist edn. 1998.

[6] (1952) S.C.R. 89.

[7] (1965) 1 S.C.R. 933.

[8] (1967) 2 S.C.R. 762

[9] (1973) Suppl. S.C.R. 1.

IMPERATIVE OF HARMONIOUS RELATIONSHIP

Satbir Singh Kadian

Introduction

Parliamentary democracy is a participatory system in which the people, the Parliament and the Government have their own responsibilities and roles to play. The correct functioning and the right inter-relationship among the three wings of parliamentary functioning, *i.e.* the Legislature, the Executive and the Judiciary is an essential pre-requisite for sustaining desirable standards in democracy. Parliament is one of the chief instruments of democracy and, therefore, effectiveness and accountability are ordinarily considered its principal attributes. In theory, Parliament is sovereign and it is "the grand inquest" of the nation. It supervises, influences and puts a check on the actions of the Government.

The Indian Parliament and the State Legislatures differ from the British Parliament, not merely as regards the general political status, but also in the matter of legal powers. India is a federal country and secondly, it has a written Constitution invested with supremacy over its citizens and the various organs of the polity and providing for an independent Judiciary not only with the power to interpret its provisions but also with the power of judicial review, the scope of which is to be determined by the Judiciary itself. Moreover, the Indian Constitution is the most detailed document of its kind in the world and ensures a variety of Fundamental Rights to its citizens. In the UK, the Parliament is supreme and this supremacy is even to the extent that illegalities may be legalised. The British Parliament can make or unmake law without the fear of any body, except the political sovereign, the electorate.

Distribution of Powers

Under the Indian Constitution, the sovereignty of the Legislature is strictly limited. There are three Lists of subjects on which Parliament and the State Legislatures can legislate. Parliament can legislate on matters in the Union List and the Concurrent List, while the States can legislate on matters in the State List and Concurrent List, subject to the power of the

Parliament to legislate on matters in the Concurrent List. If the Parliament or any State Legislature oversteps the limits of the Lists, their acts will be struck down by the Judiciary. Secondly, the constitutionality of the acts of the Parliament and the State Legislatures can be challenged in the courts even for violation of any provision of the Constitution. There are special provisions with regard to the Fundamental Rights in Part III of the Constitution. The Judiciary's powers stem from articles 32 and 226.

Whereas the function of the Legislature is to enact laws, the Judiciary is to decide the rights of the parties according to the law. Through the legislative process, the Legislature lays down the law. The Judiciary cannot issue or prevent the Legislature from passing an unconstitutional law, nor can the Legislature in India decide, while passing a law, whether it is constitutional or otherwise. It has been ruled a number of times in the Central Legislature that "The Chair should not assume jurisdiction to decide question of competence". Of course, in a civil dispute between two parties, the Legislature is not competent to pass a law upholding the claims of one party before the matter is decided by a court of law as such a law would be a violation of article 14. But, the Legislature is competent to put an end to the finality of decision by a court by an enactment. Such an act of the Legislature would not be a judicial act [AIR 1953 SC 21 (220) and AIR 1947 Bom. 268 (268)].

Apart from the limitations imposed by the Fundamental Rights, the powers conferred on the High Courts under articles 226 and 227 cannot be curtailed by legislation. The legislative power also empowers the Parliament to impose restriction on the freedom of trade, commerce and intercourse between one State and another. It embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country. Though the limitations on legislative power as regards matters enumerated in the legislative Lists are not expressly provided in the Constitution, they can be derived from the spirit of the Constitution.

In the scheme of the distribution of legislative powers, the predominance of the Parliament has been accepted. Parliament has an exclusive power to make laws with regard to the Union List as provided in article 246(1) of the Constitution, but this power is not an absolute power as it is subject to the provisions of the Constitution.

Parliamentary Privileges

The Judiciary in India has much wider jurisdiction as regards parliamentary privileges than the Judiciary in the UK. Its interpretative function in relation to the Constitution empowers it to determine the privileges, powers and immunities which would be available to each House of Parliament under article 105(3) and to the State Legislature under article 194(3). The powers of the High Courts and the Supreme Court to interpret these provisions of the Constitution have been a subject of conflict between the two branches of the polity for the past three decades. The first major confrontation between the judicial and the legislative branches of the polity arose in 1964 with the U.P. Vidhan Sabha's decision to summon two judges of the Allahabad High Court who had tried to intervene in a case of parliamentary privileges. The House claimed that it was the sole judge in respect of matters relating to parliamentary privileges and courts could not interfere with the decision of the House taken under article 194. To avert a constitutional crisis, the President sought the opinion of the Supreme Court in the matter. The Supreme Court said that the court alone is competent to say as to what privileges of the House of Commons, the Indian Legislatures could claim under article 105(4) or 194. The implication of the Supreme Court's opinion was that the Judiciary is the ultimate interpreter of the constitutional provisions. The matter would have ended here, but the Presiding Officers of the Legislative Bodies in India raised this issue in their Conference at Bombay in January 1965 and passed a resolution criticizing the opinion of the Judiciary. The Judiciary is of the view that articles 105(3) and 194(3) have to be interpreted by the Judiciary like any other article of the Constitution. Similarly, article 122 relating to the proceedings of Parliament and article 212 relating to those of the State Legislatures are also prospective sources of conflict between the two branches. These articles oust the jurisdiction of courts as regards any 'alleged irregularities of procedure' in the House, but courts can intervene if the proceedings are marked by irregularity.

Anti-Defection Law

There has been a running dispute between the Judiciary and the Legislature about the interpretation of the Constitution in the past. The Anti-Defection Law gave rise to several more controversies between the Legislature and the Judiciary. This issue rocked the Parliament in January 1991, when some members of Parliament who belonged to Prime Minister, Shri Chandra Shekhar's Cabinet were disqualified even as the matter was still before the High Court. In 1992, the case of the Manipur Legislative Assembly Speaker Shri Borobabu Singh attracted wide attention because of the Speaker's claim that the Presiding Officers of Indian Legislatures were sovereign to take decision on matters of law.

In fact, the root of the problem is that we have adopted a meticulous, written Constitution which, of necessity, has to be interpreted by the Judiciary and also adopted the parliamentary form of Government based on the British model. In Britain, the Parliament is supreme. This British model has given the idea to the Indian Legislatures that they are sovereign as the British Parliament except for the limitations placed on their law-making powers. The dispute will persist unless Indian Legislatures reconcile themselves to the existing constitutional scheme and the Judiciary masters the art of walking adroitly the thin line between its perception of the constitutional provisions and the political realities of the day. It is said about American democracy that almost every political question arising there gets turned into a judicial question sooner or later. This observation seems to apply to the Indian situation also.

Judicial Activism

Another problem affecting the smooth relationship between the Legislature and the Judiciary stems from the phenomenon called judicial activism which has been much in evidence during the last two decades. Judicial activism needs to be restrained to maintain the balance between the Legislature and the Judiciary. For example, in the past, the interpretation of article 21 of the Constitution by the Judiciary remained a matter of controversy. Later, the Supreme Court admitted that the expression "procedure established by law" in article 21 contemplates procedure which was followed by the various High Courts even prior to the passing of the Indian Constitution and includes summary procedure based on fairness and justice untrammelled by technicality and there is nothing invalid in the practice and procedure followed in matters of contempt on account of article 21. The Supreme Court also gave directives to the High Courts and subordinate courts while interpreting that article.

In short, the Judiciary is the guardian of the Constitution. The Legislature can amend the Constitution through a procedure which is certainly simple, but subject to the condition that certain features of the Constitution are not amended which are basic and deep rooted in the spirit of the Constitution. The need of the hour is restraint and conformity to the letter and spirit of the Constitution, both by the Judiciary and the Legislature.

PART VII : PARLIAMENT AND HUMAN RIGHTS

PARLIAMENT—GUARDIAN OF HUMAN RIGHTS

Ranganath Misra

By early 1945, indications of the War drawing to an end became clear. The six years of unprecedented fighting had killed millions of people in the war fronts as well as in their abodes outside the war zones. The new approach of total war had made everything vulnerable. Hospitals, educational institutions, ancient monuments and rare treasures of civilization were reduced to ashes. Mankind witnessed the havocs of the atom bomb which affected even the foetuses in the mothers' wombs and threatened the existence of the *homo sapiens'* race on Mother Earth. Right thinking people everywhere on the globe drew themselves together with a determination to end war for ever and free mankind from its devastating challenges.

UN and Human Rights

The world realized that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. The inherent dignity and equal and inalienable rights of all the members of the human family are the foundation of freedom, justice and peace, and the world order has to be based on them. The United Nations Charter mandated the setting up of a Commission to draw up a code of human rights. The Commission was constituted as one of the early measures in restoring peace and recommended the adoption of the Universal Declaration of Human Rights (UDHR). On 10 December 1948, the UN General Assembly adopted the UDHR—the first instrument to codify human rights. The Preamble of the UDHR specifically mentioned that the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and that they are determined to promote social progress and better standards of life in larger freedom. The Declaration further asserted that a common understanding of these rights and freedoms is of the greatest importance for the full realization of the pledge.

Through the UDHR, United Nations further proclaimed that the Declaration was the common standard of achievement for all people and for all nations and requires every individual and every organ of society to keep the same constantly in mind and strive by teaching and education to promote respect for the rights and freedoms and by progressive measures, national and international, secure its universal and effective recognition and observance. Realizing the fact that the Declaration was not as such enforceable, two Covenants—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—were drawn up and approved by the United Nations General Assembly in December 1966 and member states became signatories and bound themselves. The Declaration and the two Covenants thus formed the basic structure of human rights provisions.

While the UDHR talked of the rights of the entire humankind, in the following years, the United Nations addressed itself to specific rights of particular groups like children, women, physically handicapped, refugees, stateless people and the like.

Violations of Human Rights

Human rights are violated in various places and situations. Very often, violation takes place within the family and secluded places. Similarly, violations occur in public offices and social institutions. Very often the setting in which violations occur provides a cover and make detection difficult. Violations that occur in camera never see the light of the day. The obligation of mankind under the Charter is to create a violation-free society where human rights would be the working code of conduct for everyone. Universalizing human rights would be the working code of conduct for everyone. Universalizing human rights and making the conduct of every human being conform to the same has been the effort of the United Nations and its agencies during the era following the UDHR.

International Covenants and Conventions

International conventions have been held from time to time to help the generation of proper conduct and acceptance by men and women of human rights as the common standard of conduct. The efforts of the United Nations in this regard can be divided into different periods: upto the end of the 1966, all actions were mainly addressed to the setting up of the operating system with the Declaration, followed by the Covenants as the back bone. The Teheran International Conference on Human Rights held in 1968 stressed that the Universal Declaration was binding on all States and called upon the member countries to redouble their efforts to apply the principles set out in the Universal Declaration and the two Covenants. Then came the period upto the World Conference on Human Rights held in Vienna in 1993 when international opinion became firm and clearly manifest on several issues, and terrorism was unequivocally condemned. The adoption of the Convention on the Rights of the Child in 1989 was another major step forward. The United Nations also directed its activities pointedly to improving the economic level of the backward countries and simultaneously kept watch over evolving a conduct in conformity with the prescriptions in the Universal Declaration. The Vienna Conference of 1993 created an occasion for review of the human rights situation in every aspect; it also took note of the menace of growing terrorism in different parts of the world and stressed that violators of human rights were not entitled to their own human rights. Special attention was devoted at the Vienna Conference on the right of asylum, genocide and discrimination against targeted groups. The Fourth World Conference on Women held in Beijing in 1995 concentrated upon protecting the human rights of women. Then came the combat against racism. In the International Decade of the World's Indigenous People (1995-2004), the UN has been focusing attention on the sad plight of indigenous people and highlighting the need for their improvement. The periodic reviews of the human rights situation have a positive effect on familiarizing human rights and helping the people to modulate their conduct so as to conform to the approved standards. The Vienna Declaration of 1993 had resolved that the United Nations should set up a Commissioner for Human Rights and from early 1994, the Commissioner started working. This brought about better linkage of activities and generated greater coordination. The goal fixed by the Universal Declaration has received considerable support from the coordinated action of the UN High Commissioner for Human Rights.

Role of NGOs

Several non-governmental organizations have come into existence in the field of human rights related matters and they have grown in size and importance to make the culture of respect for universal human rights effective and visible. Powerful bodies with a wide range of activities have sprung into action in the international as well as national fields, effectively scrutinizing violative conduct. These NGOs have indeed generated both international ethics and standards which have become the unwritten code of human rights. Human rights know no frontier and, therefore, screening of conduct and behaviour from the human rights angles by NGOs and even public bodies of foreign countries is gradually being tolerated more and more. International meets have been trend-setting in the matter of generation of consensus and making interference from outside acceptable.

India and Human Rights

The Indian Parliament provided a municipal legislation by enacting the Protection of Human Rights Act, 1993, as the supportive legislation. Many countries have such laws to ensure and support concomitant behaviour in the community. By the aforesaid Act, the Parliament has constituted a National Human Rights Commission for the whole country. It has charged the Commission with the responsibility of ensuring human rights for every one. The Commission has been vested with *suo motu* power to entertain instances of breach and has been given judicial powers to make enquiries. Section 12 enables the Commission to intervene in any proceeding before any court where violation of human rights is involved. The legislation also empowered the States to set up their own Commissions. The statute has also charged the Commission with the responsibility of undertaking research in the field of human rights and spread of human rights literacy within the community and to promote awareness of the safeguards available for protection of these rights.

Section 30 of the Act has made provision for Human Rights Courts with a view to expediting disposal of cases instituted on the allegations of violation of human rights. The statute has authorised the National Commission to make its annual reports and special reports as it considers appropriate from time to time. Section 20 lays down:

(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government, as the case may be, shall cause annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature, respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of recommendations, if any.

The Act, thus, provides the modality through which the Parliament can acquaint itself with the human rights situation in the country. The link between the Commission and the Parliament is available through section 20 and the activities of the Commission can really be thrashed out by discussing the report. The nation can be kept informed through such parliamentary debates about the functioning of the Commission as also of the human rights situation in the country. Social balance can be visibly maintained and the community can be kept aware of the situation. Experience shows that while the annual reports have been furnished in good time, they have not been laid before the Houses of Parliament in time and no discussion has followed in regard to these reports. Under the prevailing system until the reports are laid before the Houses of Parliament with details of action taken, the same are not available to the public. Parliament should evince more interest and focus greater attention on the Commission's reports. Through its debates, the Parliament can sensitize the Commission about human rights issues and while not interfering with the working autonomy of the august body, sufficiently assist in the harnessing of appropriate modalities. Similarly, the debates can help the generation of the right conduct of the people.

The President of India, in his speech on Human Rights Day on 10 December 2001, dealt with this aspect by saying that the powers of the Commission should be enlarged. He also stated that the statute may be amended and the annual reports may be made public in case the Government did not lay them in Parliament within three months of receipt.

Role of Parliaments

The Universal Declaration has cast the burden of spreading the culture of human rights on every individual and every organ of the society. This universal responsibility casts a burden, both on the people and their institutions in any part of the world, to be concerned with human rights situations in other countries too. Recent instances of Parliaments of certain countries dealing with human rights situations outside their jurisdiction are on the increase. The European Parliament debated the existing human rights situation in Vietnam. In its annual report on human rights in the world in 2000, it accessed the human rights situation in the different parts of the world and censured the anti-human rights steps taken in different parts of the world. In mid 1998, the Australian Parliament in its Senate Committee also dealt with the then prevailing situation. Palestine's human rights situation was recently dealt with at length by the European Parliament. There have been similar instances of Parliaments of different countries debating over human rights situation outside their countries. The Swedish Parliament discussing human rights situation in Turkey, the European Parliament discussing human rights situation in China, the

Australian Parliament discussing human rights situation in Vietnam are similar instances indicating international concern expressed in the national institutions over questions of human rights. These instances clearly indicate that keeping the spirit of the Universal Declaration, human rights violation anywhere is being considered as a matter of concern for the entire mankind.

There is a feeling among many in our country that a Joint Committee of both the Houses of Parliament should be set up for keeping a watch on the human rights situation in the country. This is perhaps a very sensible suggestion and should be taken up for consideration without delay.

While the national identity still exists and municipal laws continue to regulate people's action in the community, it is no more disputable that the world has become one home and an international community has emerged. It is time when municipal laws yielded to the fast emerging of an international system, particularly in the field of human rights. The code of conduct for the international community has got to be in conformity with the prescription of human rights if mankind has to be away from war and live in peace.

THE LONG MARCH TOWARDS SECURING HUMAN RIGHTS FOR ALL

Kalawati Subba

The dominant goal of the Constituent Assembly of India was that Parliament should be looked upon as the "mirror of people's mind and the guardian of their liberties." The function of Parliament is to make laws for the good government of the country and to legitimise the rules and regulations issued by the Government. It has to serve as a check on the Executive and attempt at all times to scrutinise its actions and guard against its transgressions against the citizens. It has to act as a body of Ombudsmen looking into and seeking to remedy the grievances of citizens against the acts of omission and commission of the bureaucracy and more importantly to serve as a reservoir of political leadership. Thus, the parliamentarians have a very important role to play in safeguarding human rights.

Human rights, in simplest terms, mean the laws and practices that have evolved over the centuries to protect ordinary people, minorities, groups and races from oppressive rulers and Governments. Of the total world population, only one-fifth can be said to enjoy lives consistent with modern ideas of what constitutes human rights. The natural rights are the foundation of all civil rights. The division of the rulers and the ruled has been a feature of society from the moment one group of individuals sought power over others or they believed that they were best able to order the affairs of the people of the country. However, the excesses of rulers have forced oppressed subjects in certain moments of history to protect themselves and to seek the freedoms they were being denied. The most significant of these charters were the Magna Carta, the American Bill of Rights and the French Declaration of the Rights of Man and of the Citizen. They form the basis not only of modern ideas on the theme but of the Universal Declaration of Human Rights which was adopted without a dissenting vote in 1948 by the General Assembly of the United Nations.

The progress towards securing and safeguarding human rights has been slow and faltering. In the long and continuing march of mankind down the ages man has been trying to grapple with new situations and new environments of thought and habitat and, in the process, evolving new ideas, concepts, values and norms of conduct and relationships. The concept of basic or fundamental human rights or the natural and inalienable rights of man has also been a variable and dynamic one. No rights can be absolutely immutable or entirely unrelated in their application to the socio-cultural setting and political and economic conditions. This does not, however, mean subscribing to a particularistic approach to human rights.

Human rights are for all men and women, general and universal. It should not be linked to any special positions. Human rights are rights both of individuals and of society. They are also rights of groups, of minorities and of majorities. The concept of non-discrimination is basic to human rights. The pages of history show that this principle has not always been so self-evident or accepted. There has always been a perennial conflict between the elites' perception of their individual liberties and the fundamental human rights of the common people. Also, there has always existed and continues to exist a wide gap between precept and practice, between abstract principles and their application.

The concept of human rights today essentially has political, social and economic connotations. The role of the Legislature is all too evident in such a scenario. In its efforts to secure social justice to the people, every State is consciously committed to economic growth and, therefore, to planning, direction and control of social change. There are rapid scientific and technological advances in the present day world and rights get more substantive and more dependent on legislative action. Legislation comes to play a more significant role in the creation of new norms and standards. It has to become an instrument of development and social change by helping to remove or alter existing socio-economic stratifications and iniquities that are found to hamper the smooth realisation of economic, social and cultural rights for the community as a whole. The role of Parliament as a legislative body and, more importantly, as the prime mover of social engineering, thus becomes most vital and salient.

Human rights all over the world are threatened by excessive concentration of wealth and means of production and distribution and the most extravagant consumption patterns in the advanced and developed countries and also by racial discrimination and restrictive trade practices. There is overt or covert interference by some powers to dictate and determine the national policies and programmes of other countries and for that purpose to prefer more subservient and unstable minority or military Governments without any popular base. Further, human rights are also threatened by the growing and ever increasing gap between the affluent developed countries and the developing countries. In such a situation, national Parliaments are a potent platform for vindication of fundamental human rights and a forum for ventilation and redressal of the grievances of the ordinary citizen.

Parliament has also got to resolve the perennial conflict between the demands of liberty and equality. It has to ensure that the constitutional rights of equality of all citizens comes to have some meaning in practice for the vast majority of the poor population. On the other hand, Parliament has to see that the socio-economic rights enshrined in the Constitution are feasible in the context of the socio-economic development of the country. Further, it has to make sure that the legislative proposals brought forward by the Government do not entail curtailment of the civil and political rights and liberties of citizens. The opinions expressed by the elected representatives during debates in Parliament carry weight with the Government, influence administrative thinking and help in the shaping of Government policies. Parliamentarians can make full use of the parliamentary processes in discharging their responsibilities to improve the standards of human rights. Legislative measures can be adopted by Parliament falling in the category of social or human rights legislation. In a parliamentary democracy, the protection and preservation of human rights can be best done by a vigilant Judiciary and sensitive representative institutions acting together, freely and in accordance with the provisions of the Constitution.

PARLIAMENT AND THE PROTECTION OF HUMAN RIGHTS

I.P. Massey

Introduction

Retrospection and self-correction are the hallmarks of a democratic society. There comes a time in the life of every nation when there is a need to pause and to take stock of the dominant institutions of its governance. The Fiftieth Anniversary of the Parliament of India which falls on 13 May 2002 is certainly a unique opportunity for such an exercise. However, the pitfall in such a stocktaking is that one may start talking of the past instead of allowing the past to talk. In this paper, an attempt has been made to let the past talk to us. It is one thing to explore the past for finding justification for our pre-conceived notions and another to explore it for knowing the truth.

Parliament : A Multifunctional Institution

Parliament occupies the centre stage in the Indian political structurization. It symbolizes the hopes, aspirations, power, majesty and sovereignty of the people. Over the years, it has come to be recognised as the symbol of India's democracy and freedom. It is much more than a mere legislative body; it is a multifunctional, supreme institution of the people. It has the responsibility of translating the constitutional vision into reality of a socially inclusive society based on shared humanity, equality and non-discrimination. In this Fiftieth Anniversary Year of the Parliament, the nation salutes all those great people who nurtured and nourished Parliament and gave it the majesty it deserved and guided the destiny of the nation. If today, India occupies the pride of place in the comity of nations, it is because of its unfailing democratic traditions and for this, the Indian Parliament deserves the nation's gratitude. Certainly, there were occasions when the Parliament was found faltering but those can be dismissed as merely aberrations because the institution had the inner strength, vitality and resilience to overcome those weak moments. Today, the Indian Parliament is held in high esteem the world over and it is for this reason that the terrorist attack on 13 December 2001 on the Parliament evoked unequivocal condemnation from all the countries of the world as an attack on India's democracy and freedom.

Human Rights in a Civil Society

During the past fifty years the achievements of the Indian Parliament have been various and varied; particularly, its contribution in the area of protection of human rights of the people is certainly laudable. Human rights provide a universally accepted code of ethics necessary for protecting the dignity and worth of an individual in a society. They are the minimum rights which every human person must have for no other reason except that he is a human person. These rights are necessary for the protection of his dignity and worth in the society. If these rights are taken away, it will reduce him to a mere sub-human existence. Therefore, in every civil society, such rights are protected by the Rule of Law. These rights are not the gift of any State and, therefore, cannot be taken away like subsidies. The function of the Government is only to recognise them and protect them. The protection of these rights is a pre-condition for peace and tranquility in the society. The Universal Declaration of Human Rights, 1948, rightly emphasised that "whereas it is essential, if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law". Today, human rights have become the cornerstone of every civil society. A society where human rights of the people are not protected by the Rule of Law has no right to call itself a civil society. There is no test more decisive in determining the level of civilization and culture of any society than the protection it accords to the rights of its people. Like democracy, protection of human rights is not a fixed condition; it is a process and a growing condition, wherein constant effort is required to march towards the ultimate goal.

Human Rights : A Legacy of Our Freedom Struggle

In India, human rights are a legacy of our freedom movement. Soon after its formation, the Indian National Congress demanded from the British Government an entrenched Bill of Rights for the people to protect them from the tyranny of the Raj. This demand was consistently denied on the ground that in India, social and economic conditions do not exist wherein these rights could be made meaningful. Therefore, when India became free, the Constitution of India contained an entrenched Bill of Rights and also promised to the people: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all, Fraternity, assuring the dignity of the individual. It was the Indian Parliament which translated these abstract rights into binding legal norms to checkmate deprivation, oppression and want from which people were suffering, especially the disadvantaged sections of the society.

The Protection of Human Rights Act, 1993

Leaving aside all significant measures which the Parliament initiated for making the human rights of the people meaningful to them, the high water-mark of parliamentary activism was reached when Parliament enacted the Protection of Human Rights Act, 1993 for the better protection of human rights of the people. The President of India promulgated an Ordinance on 28 September 1993 with a view to providing for the setting up of a National Human Rights Commission and also Human Rights Commissions in the States. Later on, the Parliament embodied the provisions of the Ordinance into the Protection of Human Rights Act, 1993. Under the provisions of the Act, a National Human Rights Commission was established in 1994. Unfortunately, only 12 States have so far established State Human Rights Commissions.

There had been a growing concern in the country and abroad about issues relating to the protection of human rights in India. The Report of the Amnesty International (1993) described a pattern of persistent abuse of human rights of the people, especially of the disadvantaged sections of the society. The crux of the Report was that Government functionaries often defy law, take law into their own hands and are seldom held accountable. In this process, it is the weaker sections of the society which generally suffer. In order to salvage the situation, the Judiciary in India had certainly done its best and it will be right to say that without the Judiciary's initiative and assistance, human rights of the people could not have survived in India. No human institution in the world has done so much as the Supreme Court in India to reach human rights justice to the people. Law enforcement agencies lacked sensitivity; there was a visible lack of political will; accountability mechanisms were feeble to the extent that political accountability mechanisms were partisan; administrative mechanisms were untrustworthy; and judicial mechanisms were technical, costly and slow. In this bleak scenario, the Indian Parliament rose to the occasion and enacted the Protection of Human Rights Act, 1993, with the aim of devising more efficient and effective methods of dealing with the situation by bringing greater transparency and accountability in the process.

Salient Features of the Act

The Salient Features of the Act include:

- Constitution of a National Human Rights Commission with a former Chief Justice of the Supreme Court as its Chairman;
- Every State is also empowered to establish State Human Rights Commission with a former Chief Justice of any High Court as its Chairman;
- Chairpersons of the National Commission for Minorities, the National Commission for Scheduled Castes and Tribes and the National Commission for Women are associated with the National Human Rights Commission for the discharge of certain functions;
- National Human Rights Commission is constituted as a fact finding body and to conduct enquiries into cases of violations of human rights and make recommendations;
- Commission is provided with an independent investigative agency of its own to be assisted by the investigative mechanism of the State;
- Commission is empowered to make recommendations for the implementation of existing laws for the protection of human rights;
- Commission is also empowered to undertake research in the area of human rights and undertake human rights awareness programmes with the cooperation of non-governmental organizations working in the area of human rights; and
- States are empowered to establish Human Rights Courts in each district for the speedy disposal of human rights violation cases.

NHRC

The National Human Rights Commission is constituted under the Act as a high profile Commission which becomes clear from its membership. Section 3 of the Act lays down that the Commission shall consist of:

(i) a Chairperson who has been a Chief Justice of the Supreme Court;

(ii) one member who is, or has been, a judge of the Supreme Court;

(iii) one member who is, or has been, the Chief Justice of a High Court; and

(iv) two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

In order to ascertain that only persons of the highest calibre and integrity are appointed as members of the Commission, appointment is made by a Committee headed by the Prime Minister of India and which includes the Speaker of the Lok Sabha, Union Minister of Home Affairs, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha and the Deputy Chairman of the Rajya Sabha as its members. To enable the members to discharge their functions fearlessly and independently, the Act takes away the removal of the members from the purview of the Government. It provides that the Chairperson or any member of the Commission can be removed from office only by the order of the President of India on ground of proved misbehaviour or incapacity after an enquiry by the Supreme Court on a reference by the President. Further, neither the salary and allowances nor other terms and conditions of service of a member shall be varied to his disadvantage after his appointment. Thus, the Parliament provided the same security of tenure to the members of the Commission as is provided to the judges of the Supreme Court. The Act also lays down that on ceasing to hold office, a Chairman or a member shall be ineligible for further employment under the Government of India or under the Government of any State. This was necessary to insulate members from any allurement of office after retirement.

Functions and Powers of NHRC

The Parliament has created the National Human Rights Commission as a *sui juris* body for examining and investigating questions and complaints relating to violation of human rights, and also the negligence on the part of any public servant in preventing such violations. It has also been given power to enquire *suo motu*. Any victim of a human rights violation or any *pro bono publico* can file a complaint before the Commission.

The Parliament has sufficiently armed the Commission with powers necessary while investigating into complaints of violations of human rights. The Act provides that the Commission, while making enquiries, shall have the powers of a civil court trying a suit under the Code of Civil Procedure, 1908. It can summon any person and enforce his attendance, issue discovery and production process for documents, receive evidence on affidavits, requisition any public record, and issue commissions for examination of witnesses or documents. The Commission or any other officer especially authorised by it may enter any building or place to seize any document relevant for the purpose of enquiry. Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code and the Commission shall be deemed to be a civil court for all purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Procedure for Investigation

The Commission has been provided with an investigative authority of its own which conducts enquiries in cases of violation of human rights. With the permission of the Government, Commission may utilize the services of any officer or investigative agency for any enquiry. For the purpose of conducting enquiry, the Commission has been empowered to develop its own procedure, however, with the condition that persons likely to be prejudicially affected by the decision of the Commission must be heard. Witnesses giving evidence before the Commission are also adequately protected. No statement made by any person before the Commission shall subject him to or be used against him in any civil or criminal proceedings except a prosecution for giving false evidence by such statement.

Where the enquiry discloses the commission of violations of human rights or negligence in the prevention of such violation by a public servant, the Commission may recommend to the concerned Government or authority to initiate proceedings for prosecution or such other action as it may deem fit. The Commission may also recommend for the grant of such immediate relief to the victim or members of his family as it may consider necessary. The Commission shall forward a copy of its enquiry report together with its recommendations to the concerned authority which shall, within a period of one month, or such further time as the Commission may allow, forward its comment on the report, including the action taken. The Commission may, thereafter, publish its enquiry report together with comments and the action taken by the authority.

It becomes amply clear from the above provisions that the NHRC does not render decisions like a court of law nor can its recommendations be enforced like judgments of the court and this is one of the major drawbacks of the Protection of Human Rights Act. It is true that the Parliament, in exercise of its wisdom, did not constitute NHRC as a court of law but this does not mean that it renders the Commission ineffective. The Act provides that where the recommendations of the Commission are not accepted by the authority, it can move the Supreme Court or the High

Court, as the case may be, and get a binding decision. It is gratifying that there was no occasion for the Commission to take recourse to this provision as all its recommendations were generally honoured by the Government and other authorities.

NHRC Recommendations

The working of the NHRC during the last nine years amply demonstrates that its recommendations are held in high esteem because of their social and political implications. It was on the recommendation of the NHRC that the Government had to repeal the Terrorist and Disruptive Activities Act. Though the Union Government had decided to extend the life of the Act, a temporary measure, beyond 23 May 1995 when it was due to expire, the positive stand taken by the Commission made it difficult and the Act lapsed. In order to enable the Commission to have a greater say in the follow up action with a view to making its recommendations more effective, the Commission has suggested to the Government to make it necessary for the authority to initiate proceedings for prosecutions or take such other action as the Commission may deem fit and award appropriate compensation. One can hope that the Indian Parliament which is highly sensitive to human rights issues would take positive action on this recommendation of the Commission.

Armed Forces and Human Rights

The violation of human rights by the armed forces, if any, does not directly come under the jurisdiction of the Commission. But the Commission may seek report from the Central Government on its own or on a petition filed by a party. After receiving the report, the Commission may proceed with the complaint and make recommendations to the Government. It is further provided that the Central Government will inform the Commission of the action taken by it and the Commission shall publish its report together with the recommendations made by it to the Government. The copy of such report is also required to be supplied to the petitioner.

Annual Report

The Act provides that the Commission shall submit an annual report to the Central Government and the State Government concerned which is to be laid before the Parliament or the State Legislature, as the case may be, along with the action taken memorandum by the Government. In any democratic system of governance, this puts extra pressure on the Government to honour the recommendations because the Opposition in the Parliament or State Legislature will leave no opportunity to criticise the Government if the recommendations are not accepted by the Government. This is how public opinion influences governmental action. It will be highly beneficial if the annual reports of the Commission receive greater attention in our representative institutions and meaningful debate takes place on them.

State Human Rights Commission

The Act empowers the State Governments to establish State Human Rights Commission within their States. However, as mentioned earlier, only 12 States have so far established State Commissions even after repeated reminders by the NHRC and the directive of the Supreme Court. An important provision of the Act relating to the States is the constitution of Human Rights Court and the appointment of special public prosecutor for the purpose of providing speedy trial of offences arising out of violation of human rights. The State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each District, a Court of Session to be a Human Rights Court to try offences relating to the violations of human rights. So far, Human Rights Courts are functioning in only ten States. It is too early to comment on the functioning of these Courts but it is increasingly being felt that these Courts have not been able to make any dent on the already prevailing situation of long delays and hardship to the victims. Seeking justice against violation of human rights is still considered as a punishment for the victim. Thus, the system neither develops fear in the mind of the violator nor confidence in the victim.

Basic standards recommended by the Amnesty International relating to the National Human Rights Commission rightly emphasises that the creation of a National Human Rights Commission can be an important mechanism to strengthen human rights protection but can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, adequately resourced and accessible Judiciary. In India, the creation of such a Human Rights Commission should go hand in hand with a thorough review of the existing institutions and mechanisms, including legal aid programmes, in order to make these more effective instruments of human rights protection. These initiatives should be accompanied by a determined Government policy aimed at holding the perpetrators of human rights violations fully accountable, thus ending the impunity now effectively granted to virtually all those who violate human rights.

Protection of Human Rights of the Disadvantaged

Besides the Protection of Human Rights Act, 1993, the Parliament has taken several other legislative initiatives to ensure human rights justice, especially to the disadvantaged sections of the society. It is no denying the fact that because of various social, economic, and political reasons, certain categories of persons have been denied their dignity, identity and equality in the society. Such category of persons include, among others, women, children, Scheduled Castes, Scheduled Tribes and physically challenged persons. These categories of persons suffer from various forms of discrimination. Due to growing awareness, these persons are now demanding their legitimate rights in society. The Indian Parliament has passed several legislations from time to time facilitating the rights due to them.

Rights of Scheduled Castes and Scheduled Tribes

The Protection of Civil Rights Act, 1955

Article 17 of the Constitution proclaims that "untouchability" is abolished and that its practice in any form is an offence. There is no denying the fact that untouchability is the biggest violator of human rights of the Scheduled Castes and Scheduled Tribes who were placed at the bottom of the caste hierarchy. The Protection of Civil Rights Act, 1955 was passed by Parliament to prescribe punishment for preaching and practising "untouchability" and for the enforcement of any disability arising therefrom. It prescribes punishment for religious and social disabilities and also for refusing to admit a person to any hotel, hospital or educational institution established or maintained for the benefit of general public on the ground of untouchability. In the same manner, the Act prescribes punishment for any person who, on the ground of untouchability, refuses to sell goods or render services of any kind. The Act also makes unlawful compulsory labour when deemed to be a practice of untouchability. The Government is also empowered to impose collective fines on the inhabitants of an area practising untouchability. Further, offences under the Act have been made cognizable and triable summarily. Any offender above the age of fourteen, if found guilty under the Act, shall not be entitled to any probation under the Probation of Offenders Act, 1958.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

This Act *inter alia* provides for the constitution of special courts for the trial of offences relating to the violation of human rights of Scheduled

Castes and Scheduled Tribes. The special courts have been empowered to punish the violators of human rights which may include forfeiture of property and passing an externment order. The Act also makes provision for providing relief and rehabilitation to the victims of such offences.

The National Commission for Safai Karmacharis Act, 1993

In spite of various efforts by the Government, the obnoxious practice of manual scavenging continues in many parts of India. Since this practice violates the basic concept of human dignity, it is a stigma on the society. It certainly reflected the determination of the Parliament to abolish this practice when it passed the National Commission for Safai Karmacharis Act, 1993 which provides for the constitution of a National Commission for Safai Karmacharis which protects the members of the Scheduled Castes and Scheduled Tribes and also outside this specific categorization. The Commission recommends to the Central Government specific programmes of action for the elimination of inequalities in status, facilities and opportunities for the category of persons in a time-bound manner; to study and evaluate such programmes; to investigate specific grievances and take *suo motu* notice of non-implementation of such programmes and to make periodic report to the Government taking into account any difficulty or disability faced by such people. The annual report of the Commission along with the action taken memorandum is laid on the Table of the House.

Empowerment of Women

Women are central to any society; nevertheless, they have been pushed to the margin due to various social, economic and political factors. Certainly no society can progress if half of its energy and resources remain unutilized. Realising this fact, the Constitution through articles 14, 15 and 16 prohibited gender discrimination in all forms. It also empowered the Government to take affirmative action by making special provisions for women and children [article 15(3)]. Article 23 prohibits all forms of human exploitation, including trafficking in human beings. The right to human dignity can also be read in article 21 which guarantees right to life and personal liberty because life does not mean merely animal existence but a life of honour, dignity and worth. Thus, respect for human dignity pervades the entire fabric of the Indian Constitution. It goes to the credit of the Indian Parliament that it sincerely tried to translate the constitutional vision into reality by passing various constitutional amendments and also laws to empower women.

Upholding the Dignity of Women

Realising that the dignity of women cannot be protected by the State alone, Parliament inserted article 51A, clause (e) in the Constitution to provide that it shall be the fundamental duty of every person to renounce practices derogatory to the dignity of women. Though fundamental duties are not legally enforceable in the court, in suitable cases, court may give directions having regard to such duties. Furthermore, if the State makes any law to prohibit any action or conduct derogatory to the dignity of women, the court would uphold that as a reasonable restriction on the relevant fundamental right (*Sachidanand v. State of West Bengal.* AIR 1987 SC 1109; *Chandra Bhavan v. State of Mysore,* AIR 1970 SC 2042).

Representation at Grass-root Level

It was being increasingly realized that one of the reasons for lack of women's empowerment was their political marginalisation. Through the historic 73rd and 74th Constitution Amendment Acts, Parliament gave 33 per cent reservation to women, including to women belonging to the Scheduled Castes and Scheduled Tribes in village panchayats and municipalities which are the grass-root level institutions of India's democracy. These amendments further provide that not less than one-third of the total number of offices of Chairpersons in panchayats at each level shall be reserved for women. A similar initiative for reserving one-third seats in the Lok Sabha and State Legislative Assemblies for women is pending before Parliament.

National Commission for Women

A National Commission for Women was established under the National Commission for Women Act, 1990. The functions of the Commission *inter alia* are to examine and investigate all matters relating to the constitutional safeguards provided for women; to make report to the Government regarding working of those safeguards; to review the legal and constitutional provisions affecting women; to take up cases of violations of these safeguards before appropriate authorities; and to look into complaints and take *suo motu* notice of matters relating to deprivation, non-implementation and non-compliance with women's rights. The Commission, while investigating any matter under the Act, has been given the powers of a civil court. Eighteen States have so far established State Women's Commissions. These Commissions which are headed by women Chairpersons are doing their best to reach gender justice to women in a manner which was never done before.

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

Parliament took a very bold and progressive step when it allowed women choice in the matter of abortion by enacting the Termination of Pregnancy Act. The Act legalised abortions under certain conditions. However, as the facilities of sex determination test became available, it was realised that this right to choice is being misused leading to the inhuman practice of female foeticide as a result of which sex ratio of the age group 0 to 6 years started declining. In order to check this heinous practice, Parliament enacted the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 which came into effect from 1 January 1996. The main provisions of the Act include prohibition of the misuse of the Pre-natal Diagnostic Techniques (PNDT) for determining the sex of the foetus leading to female foeticide; prohibition of advertising of such sex determination techniques; permission and regulation of the use of PNDT for the purpose of specific genetic abnormality or disorder; and permitting the use of such technique only under certain conditions by registered institutions. This step is indeed a women empowerment measure in the sense that if female foeticide remains unchecked, it will eventually damage the demographic balance in India.

Family Law

When the Parliament enacted the Hindu Marriage Act, 1955, it took a very bold step in giving women a right to monogamy and equal rights in matters of divorce which Indian women never had before. The Hindu Succession Act, 1956 conferred on women equal rights in matters of succession and absolute rights over property. The Hindu Adoption and Maintenance Act, 1956 allowed women the right to adopt a child.

Recently, the Parliament amended the Christian Marriage Act in 2001 to provide equal rights to Christian women in matters of dissolution of marriage, besides providing for consent divorce. In the same manner, the Hindu Marriage Act, the Special Marriage Act and the Parsee Marriage Act were amended in 2001 to provide speedy justice to women in cases of alimony and maintenance. By amending the Code of Criminal Procedure in 2001, Parliament empowered women by removing the limit of Rs. 500 on maintenance to a divorced woman. This amendment gave wide powers to the courts in deciding the quantum of maintenance to a woman in each case.

The Dowry Prohibition Act, 1961

One of the worst atrocities which can be committed against a woman is when she is tortured in her own home and by her own persons on whom she reposes faith and entrusts her entire well-being.

In Indian society, the problem of dowry had assumed diabolical proportions leading to, in many cases, suicides and bride burning. In order to remove this dark and dismal blot on the face of the society, the Dowry Prohibition Act which made giving, receiving and even demand of dowry a cognisable criminal offence. Even unilateral demand is also prohibited. In 1983, the Indian Penal Code was amended to provide for a separate offence of bride burning with severe punishment. The Indian Evidence Act was amended to allow courts to draw a presumption of dowry death in case certain foundation facts are established and a woman dies within seven years of her marriage, thus throwing the burden of proof on the accused to prove otherwise. Dowry deaths and dowry related offences are also covered under sections 299, 300, 302, 304, 306 and 307 of Indian Penal Code.

The Commission of Sati (Prevention) Act, 1987

The Parliament again took a bold initiative in respect of women's welfare when it passed the Commission of Sati (Prevention) Act, 1987 to outlaw the diabolic practice of *sati* (burning a widow alive on the funeral pyre of her husband) prevalent in some parts of India. The Act provides for more effective prevention of the commission of *sati* and its glorification. The Act makes attempt to commit *sati,* its abetment, its glorification, a criminal offence with severe punishment. It also gave wide powers to Collectors or District Magistrates to prevent offences relating to *sati.* Further, the Act makes provisions for the establishment of Special Courts and appointment of Special Public Prosecutor to try and punish offences under the Act. Any person convicted under the Act would be debarred from inheriting the properties of the victim and also from contesting elections for a period of five years from the date of his conviction.

Domestic Violence

According to a report of the Amnesty International, about 41 per cent of women in India suffer domestic violence. In order to check this growing violence against women, Parliament amended the Indian Penal Code to insert Section 498A which makes domestic violence a criminal offence with severe punishment.

Immoral Trafficking of Women

Even though article 23 of the Constitution prohibits traffic in human beings, women are exploited and sold as commodity in certain areas. No matter sections 372, 366 and 366B of the Indian Penal Code make it an offence to sell minor girls for prostitution, to procure minor girls for prostitution or to import girls for prostitution but there was no comprehensive legislation to eradicate this reprehensible crime from the social fabric of the country. Parliament responded to the situation positively by enacting the Immoral traffic (Prevention) Act, 1956, a comprehensive legislation on the subject of sexual and commercial exploitation of, and of traffic in women.

Other Social Legislation

The meeting to launch the Asia Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and the Pacific held at Beijing from 1 to 15 December 1992 adopted the Proclamation on the Full Participation and Equality of People with Disabilities in Asia and the Pacific Regions. Since India is a signatory to this Proclamation, in order to give effect to it, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted. Through this initiative, the Parliament intended to empower persons suffering disabilities to lead a dignified and full life. The Act makes provisions for the constitution of a Central Co-ordination Committee to be headed by the Minister-in-charge of the Department of Welfare in the Central Government to exercise powers and functions under the Act. The functions of the Co-ordination Committee, among other things, are to coordinate activities of all Government Departments and NGOs dealing with matters relating to disability; to develop a national policy on disability; to take up cases of persons with disability with the concerned national and international agencies; to review funding policies; and to ensure a better environment for persons with disability in public places. The Act also provides for the constitution of a Central Executive Committee with the Secretary to the Government of India in the Ministry of Welfare as its Chairman to exercise functions assigned under the Act. In the same manner, State Co-ordination Committees and State Executive Committees are also to be constituted by the State Government as provided under the Act to exercise functions as are exercised by the Central Committees. The Act imposes an obligation on the State Governments and local authorities to take all measures necessary for the prevention of disability and also to provide free education to children with disability, to set up teachers' training institutions, to identify posts which can be reserved for persons with disability, to formulate schemes for ensuring their employment, to take all affirmative action to provide aids and appliances and to recognise and register institutions for aid and education of persons with disability. The Act further provides for the appointment of Chief Commissioner and other Commissioners who will exercise coordinating and administrative functions and would look into the complaints of deprivation of rights of persons with disability. State Governments and local authorities are also under obligation to undertake, within their economic capacity, rehabilitative measures, including insurance schemes and unemployment allowance.

Conclusion

These path-breaking legislative initiatives of the Parliament within the area of human rights protection are by no means exhaustive but merely illustrative. However, these are testimony to the fact that the Indian Parliament, during the last fifty years of its existence, has shown sensitivity, wisdom and the will to reach human rights justice to the people, especially to those who are deprived and disadvantaged. The engagements of the Parliament with human rights issues are many and disruptions few. The problem is not so much with the law as with its enforcement. The fact remains that human rights issues are not purely legal issues; they are social, economic, cultural, religious, political and behavioural issues also, all rolled into a complex amalgamation. Law is only one factor of social change; therefore, unless human rights law is supported by a similar growth in human rights environment and culture in the society, the dream of ideal society will remain merely a teasing illusion, especially for the disadvantaged sections of the society. This, however, by no means diminishes the significance of the role played by the Indian Parliament in ushering in a human rights society in India. By these human rights initiatives, the Parliament has certainly kept alive the hopes of the people in democracy and its institutions. The absence of these initiatives would have created a situation in which democracy itself may have slipped away; and God forbid, if democracy slips away, it would carry in its deluge, all the fine values of life which we so dearly cherish. This, in my opinion, is the biggest achievement of the Indian Parliament in its fifty years of existence and for this, it richly deserves the nation's gratitude.

PART VIII : EMPOWERING WOMEN

WOMEN'S REPRESENTATION IN PARLIAMENT—NEW THINKING AND STRATEGY

Krishna Bose

Indian women had played a significant role in our struggle for Independence. They had responded with alacrity in very large numbers to Mahatma Gandhi's call for non-violent non-cooperation and civil disobedience. Many of them made enormous sacrifices in the freedom movement. The climax came with women joining the armed struggle for Independence under the leadership of Netaji Subhas Chandra Bose in South-East Asia. The Rani of Jhansi Regiment of Netaji's Indian National Army was a beacon of hope for the political liberation of our Motherland and also the social liberation of Indian women.

But the promise of women taking their rightful place in our polity was not fulfilled in the post-Independence India. We are justly proud of our democratic institutions which have survived the vicissitudes of more than five eventual decades. Yet, on one important count we have fallen short—the adequate and equitable representation of women in the highest legislative bodies of the land. The gender balance has been extremely lop-sided with a mere nine per cent representation of women in the directly elected Lok Sabha. Parliamentary politics has remained predominantly a male preserve despite a woman Prime Minister having ruled the country for a considerable length of time.

How to correct the gender imbalance in the Parliament and also the State Assemblies has been a matter of concern for many of us for several years now. One apparently easy way to achieve this, some have argued since 1996, is to have reservation of seats for women in the Lok Sabha and the State Assemblies. Accordingly, a Constitution Amendment Bill was brought for the first time in the Eleventh Lok Sabha seeking to reserve one-third of the total seats for women. Women showed great solidarity in supporting this measure, even though some of us knew that this was not the best or the most judicious way of ensuring just and equitable representation for women.

The Constitution Amendment Bill as introduced amidst great opposition in the Eleventh, Twelfth and Thirteenth Lok Sabhas has had two major flaws. The first relates to the provision of rotation of constituencies which would be disruptive of the bond between the elected representatives and the people of the constituency. Serving and nurturing the constituency form an intrinsic feature of any parliamentary democracy. Even the defeated candidate often does the same in the hope that one day he or she may win the seat. The second flaw is even more serious from the point of view of women's solidarity. Reservation would create an unhealthy situation of women fighting against women behind the protected walls of gender-defined constituencies. While it makes sense to have Scheduled Caste or Scheduled Tribe reserved seats where members of these groups reside in large numbers, women are more or less evenly spread out across all constituencies.

Despite these flaws, we decided to back the reservation bill as a way of increasing the representation of women at one stroke if it could be enacted into law. But the fate suffered by the bill in the last five years has cast a dark shadow on parliamentary propriety and dignity. Each time the bill has been sought to be introduced slogan-shouting members have stormed the well of the House and have torn up the bill or engaged in unseemly scuffles. Three Prime Ministers—Shri H.D. Deve Gowda, Shri Inder Kumar Gujral and Shri Atal Bihari Vajpyaee—have expressed themselves strongly in support of women's empowerment through better representation. But there has been deep-seated resistance to the bill among our male colleagues cutting across party lines. The demand for caste-based reservation within gender-based reservation has been a useful pretext for opponents of the bill to keep it in suspended animation. The tragi-comic drama of weak attempts to bring the bill at the fag end of each Session only to be postponed to the fag end of the next one has been repeated once too often.

Is there a better alternative way to reach our goal of just and equitable representation of women? I believe there is. Even when we had been fighting for the ill-fated reservation bill, I had pointed out that a more honourable way of getting more women into Parliament and the State Assemblies would be to require political parties to nominate more women to contest elections on par with men. My own gender-neutral proposal was to see to it that neither gender received less than 40 per cent of the nominations given by registered and recognized political parties in each State. To ensure the compliance of political parties with this norm, a two-line amendment would be required in the Representation of the People Act. This is much easier to achieve with a simple majority, while a constitutional amendment would require a two-thirds majority. The Representation of People Act, 1951 sets out the rules for registered and recognized political parties. There are certain do's and dont's that must be observed by all parties in order to enjoy the privileges accorded by the Election Commission, including the allotment of the symbol. The two-line amendment would simply add that: (a) while choosing candidates in each State all registered and recognized political parties must ensure that neither gender received less than 40 per cent of the nominations; and (b) that any party failing to meet this norm would lose the recognition and, consequently, the privileges granted by the Election Commission.

When I first went public with my idea in 1998, I was delighted to find that the then Chief Election Commissioner, Shri M.S. Gill, had come to the same conclusion that this was the best and possibly the only way to assure increased women's representation in Parliament and the State Assemblies. The amendment I proposed would do away with the two major flaws in the Constitution Amendment Bill. First, no rotation of constituencies would be needed and so the connection between elected representatives and their voters would not be served. The objection that political parties would not give women candidates 'winnable' seats is misplaced because there is hardly any serious political party which would not wish to win any particular State. Even if certain political parties assign relatively difficult seats to some women, a requirement of a minimum of 40 per cent of nominations to each gender will result under the current political circumstances in approximately one-third of the seats being won by women in each State. Second, the onus will be on the political parties so concerned about adequate representation of women from the Backward Castes to award nominations to members of these disadvantaged groups in high numbers in constituencies of their choice. It is my understanding that even political parties and male incumbents opposing the reservation bill can be persuaded by the merits of this amendment approach, while for women in general, it will be a more honourable and effective way of achieving their objectives.

My proposal is based, not just on an analysis of the Indian political situation, but a study of strategies that have been most successful in enhancing the representation of women in Parliament worldwide. In the U.K., the Labour Party under Tony Blair had voluntarily offered a fifty per cent of nominations to women, thereby boosting the number of women members in the House of Commons very substantially. The French National Assembly passed a law a couple of years ago stating that if nominations of women by any political party fell below 49 per cent. State funding for that party would be reduced proportionately. Since we do not have State funding of elections, the sanction against any errant party in India would have to take the form of withdrawal of the privileges given by the Election Commission. A number of Scandinavian and Latin American countries have laws to ensure that women get proper representation on the candidates' lists of political parties. Most recently, even the war-torn Bosnia has made it a legislative requirement that the 'minority gender' must receive 40 per cent of the nominations of each and every political party. Surely India can achieve what Bosnia has already done!

It is a pity that even though my proposal was appreciated by the intelligentsia and sections of the media, it was not accepted by the political parties prior to the parliamentary elections of 1998 and 1999 and the spate of State elections that have been held in the past four years. If it had been accepted then the composition of our highest elected bodies would by now have better reflected the gender balance in our population. However, as a humble member of Parliament I was able to introduce a Private Member's Bill embodying the simple amendment of the Representation of the People Act outlined above without any opposition and with considerable enthusiasm from my colleagues. I hope it will come up for discussion and debate in the not too distant future and receive a positive vote. It is my ardent hope that the Government will adopt this Bill as its own so that instead of becoming a non-binding resolution, it actually becomes the law of the land. The Thirteenth Lok Sabha will then have enriched Indian democracy and go down in history as having ensured that the Fourteenth and subsequent Lok Sabhas will be more genuinely representative of the Indian people.

ROLE OF PARLIAMENT IN EMPOWERMENT OF WOMEN

Shyamlha Pappu

2001, the 'Year of Women Empowerment' has rolled by. While Indian activists are struggling to find a strategy for the empowerment of women by devising reservation quotas and other methods, France has stolen a thundering march by enacting a new law which says that in all elections, political parties should put up an equal number of men and women candidates, thus granting real parity between men and women. The result is a magical scramble for women candidates! The French law is all the more remarkable because so far French women have been known as being outstanding in dress design and fashion only and the French society has, by and large, been elitist!

Late Francois Mitterand, the Socialist President, tried a hand at revolutionising French politics by appointing Edith Cresson as the Prime Minister in 1991-92 but the experiment was far from happy. Edith Cresson complained that the media was thoroughly unfair to her since they wrote about how she dressed and how she looked and never talked about her performance. Many among us may not even know that such an appointment was made in France since Edith Cresson did not make a dent as a politician and remained without much comment or appreciation. Since then, France has had only 8.9 per cent of women legislators (the lowest in the European Union) whereas countries like Switzerland have had as high as 45 per cent of women legislators.

Representation of Women in Indian Parliament

The position in India is no better since the percentage of women parliamentarians in the present Lok Sabha comes barely to nine per cent; the total number of seats being 545 and the number of women members being 49. The tally in the preceding twelve Lok Sabhas is as follows:—

Lok Sabha	Total No. of Seats	No. of Women	Percentage
1	2	3	4
First	499	22	4.4
Second	500	27	5.4

1	2	3	4
Third	503	34	6.7
Fourth	523	31	5.9
Fifth	521	22	4.2
Sixth	544	19	3.4
Seventh	544	28	5.1
Eighth	544	44	8.1
Ninth	529	28	5.29
Tenth	509	36	7.07
Eleventh	541	40 incl. 1 nominated	7.36
Twelfth	545	44 incl. 1 nominated	8.1

The position in the Rajya Sabha is no better, the maximum percentage being 11.98 per cent in 1980 with 29 women members and 11.52 per cent in 1986 with 28 women members. Otherwise, the percentage has been ranging largely between 6 and 9 per cent. Presently, there are 22 women members in the Rajya Sabha, being 9.09 per cent of the total membership.

Are the above figures any indication of the empowerment of women? I am reminded of Pandit Jawaharlal Nehru who said, "If you want me to tell you what a nation is like...tell me the position of women in that country"?

Representation in Panchayats and Municipalities

To remedy this situation, the Indian Parliament has attempted reservation by legislation. Representation to women in civic bodies and municipalities has been given by the enactment of the Seventy-third and Seventy-fourth Amendments to the Constitution, whereby compulsory and minimum reservation of one-third seats has been made in elections to panchayats and municipalities and in posts of Chairpersons of all local bodies in the country. By this amendment, political rights have been conferred on women in one shot and as a result hundreds and thousands of women have entered public offices and gained access to political life.

Women's Reservation Bill

Emboldened by the acceptance and passing of the Seventy-third and Seventy-fourth Amendments to the Constitution, a more ambitious move was made with the introduction of the Constitution (Eighty-first Amendment) Bill 1996, popularly known as the Women's Reservation Bill which was introduced in the Eleventh Lok Sabha on 12 September 1996. The bill sought to reserve not less than one-third of the total number of seats filled by direct election in the House of the People and in the Legislative Assemblies of the States for women. The bill, was referred to the Joint Committee of Parliament which further strengthened the bill by extending the provision for reservation of seats even in those cases where the number of seats was less than three in a State or a Union territory. This bill, however, lapsed with the dissolution of the Eleventh Lok Sabha. Again the bill was revived as the Constitution (Eighty-fourth Amendment) Bill, 1998 in the Twelfth Lok Sabha but it lapsed on the dissolution of that House. On 23 December 1999, the bill was re-introduced as the Constitution (Eighty-fifth Amendment) Bill, 1999 and is pending in the Lok Sabha with no certainty as to when it will be passed by the Parliament.

Equality Clauses of the Constitution

The first step and an essential aspect of empowerment of women is the elimination of all forms of discrimination and removal of gender bias against women. The Preamble to the Indian Constitution mentions the nation's resolve to secure to all citizens Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all, Fraternity upholding the dignity of the individual and the unity and integrity of the nation. India is committed to the concept of equality before the law and equal protection of the laws as enshrined under article 14 of the Constitution. The Indian Supreme Court has described article 14 as the basic and inviolable structure of the Constitution.

These are the lofty goals underlying the Constitution and we have now to see how far we have achieved equality of the sexes during the last fifty years under our Constitution and how far the Indian Parliament has proved to be a tool in the process of empowerment of women.

Adult Franchise : An Inviolable Right

By the adoption of adult franchise under the Constitution, Indian women got equal voting rights with men and thus cannot be denied the right to vote and stand for elections. Women cannot be discriminated again under articles 14, 15 and 16 of the Constitution. Whereas article 14 is a general provision prohibiting discrimination by the State, article 15 not only specifically prohibits discrimination on grounds of race, caste, sex, religion and place of birth but permits reverse discrimination in favour of women by enactment of various laws for the advancement of women. Article 16 provides a guarantee against discrimination in public offices held under the State. Equal voting rights granted to women which is the axis on which the political empowerment of women rests, is a direct consequence of the constitutional guarantee of equality of the sexes enshrined under article 14.

To ensure right to equality, the Supreme Court has upheld special provisions such as maternity relief for women workers; free education for children; and special measures to prevent exploitation of women wage earners under the Directive Principles of State Policy. Under article 39(f), the Supreme Court has even upheld the validity of section 497 of the Indian Penal Code which lays down that in the case of adultery, the woman involved cannot be penalized whereas the man concerned will be punished. There is also a fundamental duty cast on every citizen to denounce practices derogatory to the dignity of women.

Corresponding Position in USA, UK, France and Canada

If we have a look at other advanced countries like the United States of America, we find that women obtained the invaluable right to vote after a long, persistent struggle only on 26 August 1920. However, some American authors have opined that women could stand for elections from 1788 onwards since the Constitution of September 1788 did not mention sex with regard to the right to stand for election to the House of Representatives or the Senate referring only to 'members' or 'persons'. This is a totally illusory assumption because it is axiomatic that a person without a vote could not aspire to be a member of the Senate!

In the United Kingdom, women had to strive and agitate for voting rights for a long time and they were able to get a limited kind of a right to vote and stand for elections only in 1918. Women over thirty years of age had voting rights to begin with and voting rights for all women were given as late as 2 July 1925.

In France, the right to vote and stand for elections for women came on 21 April 1948. In Canada, this valuable right of franchise was given in the year 1917 to women who served with military and had a close male serving relation like father, husband or son in the military and the right to stand for elections was given only in July 1920.

Empowerment of women has various aspects. What we have discussed above is political empowerment and from political empowerment follows social, economic and educational empowerment. Once women are empowered politically and occupy adequate seats in Parliament, thereby gaining social status, they will necessarily have consequential economic and educational empowerment. The equality of sexes will then become a living reality and the Constitution will come to life afresh.

Providing Adequate Representation for Women

There are several ways in which political empowerment of women is feasible; one of them is the French model which has been discussed already. If provision is made by law to have women candidates compulsory for 33 per cent of the seats (in France, it is 50 per cent) there can be political empowerment of women overnight. It is interesting to note that the Election Commission of India had made a similar suggestion that all political parties should give 33 per cent of the tickets to women candidates but the suggestion did not receive an encouraging response. This method, however, does not appear to be feasible after seeing the fate of the Women's Reservation Bill by which one-third seats were sought to be reserved in the Lok Sabha and the State Legislative Assemblies for women. The problem is whether it is one-third or one-half, no sitting member is willing to sacrifice his seat; and reservation necessarily means that one-third of the seats will be wrenched from the hands of the sitting male members. Hence, there is near unanimity in delaying the passage of the bill cutting across party lines.

The present ruling party is committed to the concept of reservation for women in Parliament. One of the Ministers in the Government has summed up the position: "There are three ways out. One is to reduce the quota from 33 per cent to 15 or 20 per cent. The other is to increase the number of seats in the Parliament to accommodate more women. The third is to adopt the Election Commission's suggestion that each political party fields a certain percentage of women candidates in every election".

Reservations have, however, been opposed by a majority of male members in Parliament. Their objection is that if the bill were to pass in the present form, it will serve very little purpose. The upper caste elite women candidates will reap the benefit. Needless to say, this objection deserves to be rejected at the threshold. They demand a sub-quota for backward class women in the bill. This is a device to break the solidarity of women since the women's bill is being supported by all women, cutting across caste and party lines.

It is pointed out that the Labour Party of Tony Blair has reserved fifty per cent of the 'winnable seats' in the British House of Commons for women. Fifty per cent of 'winnable seats' would again create problems. Which are the 'winnable seats'? What are the criteria for winnability? Why should a sitting candidate who has already won and is sitting in a 'winnable seat' be displaced? All these considerations and controversies will bring us back to square one and the stalemate will continue.

Dual Membership in Reserved Constituencies

To get over the above problems, I would suggest that we may opt for dual membership which has escaped the attention of those who are grappling with the question of reservation for women in Parliament. I would suggest that thirty-three per cent of the constituencies (or any other agreed figure) should be earmarked for dual membership. This means there would be two candidates—one male and one female—from these thirty-three per cent seats. This would no doubt increase the number of seats in Parliament by hundred to two hundred but this will steer clear of all the insurmountable difficulties indicated above.

This could also be achieved by increasing the number of seats in Parliament by thirty-three per cent (or any other agreed figure) and reserving these additional seats for women. No sitting male member will then be unseated.

List System For Election of Women

Bangladesh, the only country which has had successive women Prime Ministers, has yet another method which protects women members from the rigours of election campaigns, contest, etc. In a House of three hundred members, only two hundred and seventy seats are contested and the rest ten per cent of the seats, that is thirty seats are left for women candidates who are elected by the two hundred and seventy elected members, thereby making it easy for women to stand for elections. This method is akin to the 'List System' followed in Germany and certain other European countries as distinguished from the regular contested election as in the 'first past the post' system.

PART IX : PARLIAMENT AND MEDIA

PARLIAMENT, MEMBERS AND THE MEDIA

M. Venkaiah Naidu

Introduction

Even as one begins to write an article on the relationship between Parliament, members and the media, one gets to understand and appreciate the close interaction among them and how together they strengthen the very pillars of democracy itself.

Democracy, as we are well aware, is based on the principle of sovereignty and supremacy of the citizen. In a democratic set up, people exercise their sovereignty by placing their trust in individuals who are elected as people's representatives, either as legislators at the State level or as members of Parliament at the national level. Once elected to Parliament, members are expected not only to represent the local aspirations of the people but more importantly work toward fulfilling them. In Parliament, the members act as the voice of the people. They are the custodians of local aspirations and expectations that need to be fulfilled, keeping in mind the larger good of the nation.

The Government comprises members of Parliament from the political party that individually or group of parties that collectively command majority in the Lok Sabha or the lower House of Parliament. Therefore, the Prime Minister and his Council of Ministers who run the administration are individually and collectively responsible to Parliament which, in effect, implies the people at large. This is particularly important as in today's world, Government influence is literally all pervasive. Every policy, every decision, every action of the Government on virtually all subjects has a bearing on the lives of the citizens.

Transparency in Decision-Making

One of the most important elements that strengthens parliamentary democracy is the inherent presence of accountability where in a collective sense, the Parliament, and individually, the members of Parliament are accountable to the people. When the members of Parliament fail to discharge their responsibilities towards the people they represent, citizens can vote them out in the next elections and elect another set of representatives.

For the Government to be accountable, transparency in its decision-making process is required. Transparency or openness helps in raising the quality of the decision-making process which, in turn, can improve in the face of constructive criticism. Besides, with openness, citizens get to have a better and more informed view of the pros and cons on matters of major importance.

Right to Know

Transparency that contributes towards making the Government accountable is possible since, in a democracy, people possess the right to know. The right to know includes virtually everything, major decisions of the Government, every public act, everything that is done in a public way and everything that public functionaries undertake. The right to know helps in building public opinion and enables citizens to make intelligent and informed decisions from a variety of choices. Informed public opinion is undoubtedly vital for the creation of a better functioning of the system and effective administration.

So how do people get information on whether the Government is performing its duties with responsibility or not? This information comes through the Press and the media. Aptly called the Fourth Estate of democracy, the media plays the all important role of acting as the watchdog of the people by reporting the actions of the Government and the Parliament and keeping citizens informed about all important issues and developments that are taking place. Since the media creates awareness about the functioning of the Government, it also helps in ensuring accountability leading to the strengthening of democratic values and institutions. It is often said that the power of the media, if positively used, is potentially the best instrument to sustain and enhance democratic systems.

Given the sheer size and diversity of a country like India, the role and responsibility of the media cannot be understated. In India, the Press and media enjoy unrestricted freedom as found in other vibrant democracies of the world. And the reach and influence of the media seems to be expanding with the ever increasing proliferation of national and regional television channels and newspapers, broadcast or printed in more languages than can be possibly imagined in any other country!

Relationship between Parliament and Media

The relationship between the Parliament and the media has often been a subject of intense discussion. The media acts as a vital link between the people and the political leadership. On the one hand, the media conveys to the people a summary of parliamentary proceedings and informs about policies and programmes of the Government; on the other, it makes the political leadership aware of the pulse of the society by highlighting what people feel about specific issues, programmes and policies. This two-way process undoubtedly strengthens democracy by making the process both accountable and responsive. Since the Press keeps the people informed of what is happening in Parliament, it is sometimes also called an extension of Parliament.

Allies or Adversaries?

However, despite the Parliament and the media being important democratic institutions, the relationship between them can neither be one of allies nor of adversaries. The relationship between both institutions is one of extreme fine balance. If the media allies closely with the Parliament or the Government, it can undermine its responsibility of reporting everything in its true manifestation and can be influenced to tone down reporting on critical issues. This can generate complacency in the system and undermine effectivity and competence. Conversely, if the media acts as an adversary, it can tread the path of reporting proceedings and matters in a biased and opinionated manner and thereby cause misinformation among the people. Both situations are not desirable and in the interest of truth and democracy, the fine balance between the two institutions has to be maintained.

A balanced relationship between the Parliament and the media is also crucial because both institutions cherish the same goal of strengthening democracy even if their methods are different. A balanced relationship is thus possible only when both institutions have knowledge, understanding and appreciation of each other's roles, duties and functions. In addition to reporting on governance, the media also keeps the people informed about the various shades of political opinion, and this enables the public to make political choices at the time of elections.

Building an Effective Partnership

The New Delhi Conference on "Parliament and the Media: Building an Effective Relationship" in February 2000, for the first time identified ways to improve the relationship between the Parliament and the media.

This important Conference brought together parliamentarians, media specialists and other experts from the Commonwealth community and facilitated a lively interaction among them on various aspects of their functioning. The aim of the Conference was to determine how the complementary roles of the Parliament and the media in the democratic process can be enhanced to better inform the electorate. A total of 57 representatives of the Commonwealth's Parliaments and the media agreed that, to perform their respective duties, the Parliament and the media must work together, but it was accepted that a degree of mutual suspicion will always be an essential part of the relationship.

It is in this context, the question arises that if the media plays the role of the people's watchdog to ensure the proper functioning of the Parliament and the Government by keeping the people informed, who keeps a watch on the functioning of the Press and the media? Is there a need for any restrictions to be put in place to ensure that the media plays its role in an unbiased manner?

Understanding Each Other

We know that a free, responsible and diverse media is vital to parliamentary Government. The converse is also equally true where democracy is vital for the maintenance of freedom of the Press. The media, while drawing its strength from the political system, also infuses strength into the system. An independent and free media plays a crucial role in building and even moulding public opinion. An informed society undoubtedly contributes substantially towards creating an informed democracy. Therefore, to impose restrictions on the functioning of the Press and the media is in a way attempting to impose restrictions on democratic values and institutions itself.

Moreover, a codified set of rules and regulations on the functioning of the media has its own set of major disadvantages. This can potentially be misused to stifle free flow of information and open public debate. Therefore, it is universally acknowledged, across democratic nations, that self-regulation by the Press and media is the most desirable alternative, for this alone can ensure restraint without curbing freedom.

Simultaneously, the Press and the media cannot shirk the important responsibility of ensuring that the coverage of parliamentary proceedings is fair, factually accurate, objective and differentiated from opinion. This is possible only when the Press and media place greater emphasis on inquiring more deeply and objectively into public policy issues while focusing less on trivialities and not relying on hearsay and opinions.

Further, the Press and media have to refrain from sensationalizing issues, especially on matters of personal privacy of members of Parliament and functionaries of the Government as reporting must be consistent with a responsible definition of the public's need to know.

Fortunately, India's national and regional media has been discharging its responsibilities with utmost care and concern and given its commitment towards strengthening democratic ideals and institutions, I am sure they will continue to do so.

Telecasting of Parliamentary Proceedings

At this juncture, it is appropriate to also briefly delve on the need for developing more imaginative and attractive ways to enhance parliamentary coverage so that the people are encouraged to take greater interest in the society's principal democratic forum. In this context, the proliferation of the electronic media has played an important role in transforming parliamentary coverage. The live telecast of Question Hour proceedings and important issues such as no-confidence motions or debates of national importance has significantly helped people at large in getting a better insight into parliamentary proceedings. Moreover, now it is possible for people to immediately have information on matters of vital national importance.

Conversely, the unruly scenes and disruptions in parliamentary proceedings by members also get significantly highlighted by the electronic media. While such coverage, on the one hand, can help improve the standards of parliamentary functioning, its selective and subjective use by the electronic media, on the other, can lead to a diminishing respect among the people for the institution of Parliament which is not desirable.

Simultaneously it becomes important to ponder over the increasing trend among parliamentarians to disrupt proceedings of the House and make use of the media presence to highlight such disruptions. As a result of the live coverage of proceedings over television and also the increased Press presence during the Question Hour and Zero Hour, such activities are unfortunately getting undue prominence in the media. This, in turn, encourages some parliamentarians to continue indulging in such disruptions. The main purpose of permitting live media coverage of the proceedings of the House was to try help improve the level of discussion and debates in the House. However, with the media giving prominence to disruptions, the reverse is happening.

On a lighter note, I have often said that in a parliamentary system of democracy, the two ways of participating are either through talk-out or through walkout! But these days, one also finds that break-out is happening! This, in reality, is seriously undermining the system of parliamentary democracy. Moreover, by watching the media scenes of disruptions in Parliament and the State Legislatures, people across the nation, particularly in panchayats and Zila Parishads are deriving inspiration and are in fact emulating such disruptions much to the detriment of democratic and institutional norms. Let us not forget our age-old saying *Yatha Raja, Tatha Praja* (as does the king, so will the people do).

I must, however, point out that people who disrupt the proceedings are few in number. The majority of members are aware of the importance of constructively participating in the proceedings of the House, and given the high costs involved in the running of Parliament, any wastage of parliamentary time is a direct wastage of valuable public money.

No doubt, the overall responsibility of preventing such disruptions actually lies with the members themselves and the political parties, but the media can also play a crucial role in preventing such activities. The media can achieve this firstly by not giving undue prominence to such disruptions, and secondly, and more importantly, by moulding public opinion against unnecessary disruptions. For, after all, Parliament is the highest forum where people's representatives are expected to discuss and debate issues of vital importance to the nation and its future.

Today, unfortunately, after nearly fifty-five years of Independence, one is also saddened to find that while the Parliament continues to perform its function of enacting and modifying legislation, the time being devoted to discussions on issues of development is substantially getting reduced. In the recent past, one finds that hardly any time was available when Parliament could discuss Demands of different Ministries though the Departmentally Related Standing Committees do examine the allocations. Most of the Demands, on account of time lost and other reasons, had to be guillotined. This situation definitely needs to be corrected.

In this context, one is reminded of the untiring efforts of the Late Shri G.M.C. Balayogi, Speaker of the Lok Sabha. His significant contribution included the organization of the All India Conference of Presiding Officers, Chief Ministers, Ministers of Parliamentary Affairs, Leaders and Whips of Political Parties on Discipline and Decorum in Parliament and Legislatures of States and Union territories in November 2001. The Conference adopted a consensus document and a Code of Conduct was appended with the Resolution. It was also under the Speakership of Shri Balayogi that a new rule was added to the *Rules of Procedure and Conduct of Business in Lok Sabha* providing for automatic suspension for a limited period of such members who come to the well of the House and create disorder. Today, it would truly be a befitting tribute to this great leader if parliamentarians commit themselves to raise the standards of parliamentary discussion to the heights as envisaged by the founding fathers of this nation and refrain from disrupting the proceedings of the House.

Conclusion

I would like to conclude by highlighting the unique relationship between the Parliament and the media which is marked both by mutual respect and critical analysis. It is this unique relationship between the two institutions that makes Indian democracy vibrant and dynamic. While the Press and media have played a crucial role in the growth and strengthening of democratic values and institutions in India, the challenge lies in finding every new means and methods of better informing the people of the country about the developments and discussions in Parliament. In this context, the role of emerging technologies will be vital. Given the vibrancy of both the Indian Parliament and the media, I am confident that these two institutions will continue to perform their respective roles in the true spirit as enshrined in our Constitution.

TOWARDS AN EFFECTIVE PARTNERSHIP

S. Dhananjoy

Introduction

The two Houses of the Indian Parliament and the media are the important pillars which support the existing democratic set-up. Therefore, they should function in a complementary and cooperative manner for effective development and prosperity of the country. Working within the framework of parliamentary democracy, India has sought to realise its objectives of social justice with the active participation of the people; the role of the media in facilitating this process is vital.

There is no denying the fact that the media plays an important role in disseminating information and educating the public in a democratic set-up. It is because of the function that the media undertakes in informing the people of what is happening around the world in all spheres of life that it has been described as the 'extended Parliament'. The media further contributes to the deliberations in the Parliament in that it provides the necessary background material to the members for questions, motions and other forms of debate. The media plays a major corrective role by exposing administrative lapses and scandals and brings to public notice grievances, social injustices and corrupt and evil practices. Such exposures by the media have rocked Governments on several occasions across the world and sometimes even toppled Governments.

Parliament and Freedom of Press

In order to enable a free and responsible media to play its role effectively, unreasonable restraints should not be imposed upon its working. After all the media is the Fourth Estate in a political system.

The "Freedom of the Press" is however subject to the reasonable restrictions put by clause (2) of Article 19 of the Constitution in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Freedom of the Press has been defined as the freedom to hold opinion, to receive and to impart information (through the printed words) without any interference from any public authority. But as right implies duty, freedom carries with it certain responsibilities and cannot be absolute in any organised human society which has its own scale of value and code of conduct.

Before we come to the circumstances under which the Press may come in conflict with the Parliament, it may be pointed out that the privilege of freedom of speech specifically granted to the legislators under articles 105 and 194 of the Constitution of India is distinct from and weightier than the fundamental right to freedom of speech and expression guaranteed to a citizen. This privilege is not fettered by any other provisions of the Constitution except by articles 121 and 211.

The media may encounter the Parliament in various ways. Some important circumstances are: publication of proceedings; violation of the Rules and Procedure framed by the Parliament and State Legislatures in exercise of the powers conferred by Articles 118 and 208 of the Constitution of India; and publication of comments and statements which cast reflection on a House, its Committees or members.

The publication of the proceedings of a House in newspapers either by a member of a House or by any other person amounts to contempt of the House, unless such publications are expressly authorised by the House. Statutory protection has, however, been given under the Parliamentary Proceedings (Protection of Publication) Act, 1977 to publication in newspapers or broadcasts of substantially true reports of the proceedings of the Parliament, provided that the reports are for the public good and not actuated by malice.

The protection has been given subject to the overall limitation that the Parliament has the power to control and prohibit publication of its proceedings and to punish persons violating its orders. When the proceedings of the House or the Committees are wilfully misrepresented or speeches of members are distorted or suppressed, it is a breach of privilege and contempt of the House and the offender is liable to punishment. The Press is not permitted to publish the proceedings or any document before they have been reported to the House.

As mentioned earlier, very often, a member raises issues in the House based on news reports. During Sessions, when the members are hard pressed and busy doing home work on key issues before the House, the main source of news of important events taking place around the world is the print media. Members thus raise relevant issues on the floor of the

House based on the reports in the media. The media persons, in turn, dig for information relating to fundamental issues under deliberation in the Parliament from the members.

Conclusion

The print and electronic media could play a major role in creating awareness among the masses of what is going on in the Parliament. This process is further facilitated by the telecasting and broadcasting of parliamentary proceedings. To sum up, Parliament, the members and the media should work together for the effective and smooth functioning of the democratic machinery in particular and for the rapid progress and prosperity of the country in general.

PART X : ETHICS IN PUBLIC LIFE

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PARLIAMENTARY SURVEILLANCE AND AUDITING—PROMOTING ETHICAL BEHAVIOUR IN PUBLIC LIFE

Narayan Datt Tiwari

Introduction

Corruption in public life, generally defined as 'use and abuse of public powers for private gains', is one of the biggest challenges before the contemporary world. It is presumably as old as the time when organised society first established public institutions for its preservation and development. It is the most common as well as the most dangerous form of ethical failure. It undermines good governance, fundamentally distorts public policy, leads to misallocation of resources, and particularly hurts the poor. Corruption is a malady which has raised its head high above everything, traversing capitalist, socialist and developing societies resulting in a waste of resources, and adversely affecting economic growth and quality of life. In one form or the other, it has existed in all societies at all times of history. But in recent years, it has assumed frightening proportions. The worst thing about it is that people have started accepting it as a way of life and have adjusted with it. It has given credence to Voltaire's notion that corruption is 'an evil that grows respectable with age'.

Corruption of the State implies the corruption of the character of its citizens. States are made what they are by the type of mind they represent. An ideal State represents the type of mind in which a perfect adjustment of the faculties has been achieved, whereas a corrupt State finds this balance disturbed. The extent of corruption will depend upon the degree to which the balance has been disturbed.

In general, it is observed that corruption flourishes where State institutions are weak, where loopholes in governmental policies or regulatory regimes provide scope for it, and where watchdog institutions—*viz.*, the Parliament, the Judiciary, the audit or civil society, notably the Press—are marginalised or suffer corruption themselves. Although corruption is likely to occur in the interaction between the public and private spheres, its causes are greatly linked to a country's political and legal developments, its socio-economic conditions and its administration.

Combating Corruption through Parliamentary Oversight

The primary responsibility for the prevention and detection of corruption rests with the administrative authorities, the police and other investigative institutions and cannot be counted among the main tasks of parliamentary institutions. Nevertheless, they play a vital role in curbing corruption by improving overall financial accountability and thereby creating a climate of transparency and good governance. In fact, Parliaments are the institutional bridge between the State and the society. Theirs is the main responsibility in ensuring that State institutions are adequately accessible, accountable and transparent.

In a democracy, Parliament is the country's central institution. In its capacity as the primary expression of the people's will, it has a paramount responsibility in combating corruption in all its forms, especially in public life. Parliaments must, therefore, undertake this task for the general morality of society as also for its lasting economic progress which vitally depends on honesty and trust.

The basic premise upon which the parliamentary system of Government operates, is the accountability of the Executive to the Legislature. In the broader framework of the dynamics of a democratic polity, those entrusted with the responsibility of ensuring smooth and effective conduct of the administration are, in the final analysis, accountable to the people. Accountability is considered to be a pre-requisite for preventing the abuse of delegated power and for ensuring that power is directed towards the achievement of the accepted natural goals with the greatest possible degree of efficiency, effectiveness, probity and prudence.

The Legislatures play a role of vital importance in the functioning of modern Governments. The functions and duties of the Legislatures vary according to the nature of the Constitution of different countries, their relationship with the Executive and the nature of the party system. The popular impression that the only business of the Legislature is to make laws is erroneous, although legislation is its staple business. In all representative democracies, the Legislature is the forum of discussion, the granting authority and the instrument of popular control over the Executive.

Proliferation of State Activities

Modern Governments are characterized by a phenomenal proliferation of State activities. The assumption by the State of welfare functions and the unprecedented advances in science and technology during the twentieth century have resulted in an enormous increase in the range, complexities and scope of governmental functions and responsibilities. The result of this growth in State activities has been a corresponding expansion in administrative machinery and the emergence of new political and administrative institutions. In fact, the administration has come to play a decisive role in influencing and shaping the socio-economic order in the society of today. Vesting of vast powers in the administration gives rise to the possibility of the abuse and misuse of powers, maladministration and corruption. An urgent need of the day, therefore, is to evolve an adequate mechanism to contain these dangers.

The validity and utility of any system of accountability is judged on the basis of how effective it has been in ensuring that those vested with authority act in a responsive and responsible manner. Democratic political systems constantly endeavour to develop, maintain and further sharpen systems of accountability that reconcile a reasonable degree of autonomy with prudent control. The successful working of any scheme of accountability largely rests on the cultivation of a positive and healthy approach and attitude by all those individuals involved in the system while the instrumentality of accountability needs to check all forms of abuse of authority. It must also concentrate on promoting trends that would be instrumental in paving the way for creating an efficient and effective administration.

Effective performance and maintenance of public trust and confidence in the integrity of public service are crucial to the proper functioning of the Government. It is desirable that the public service should exhibit adequate commitment to the public good. In fact, integrity is vitally important and its increasing impact on people's lives calls for high ethical standards on the part of the administration. In a parliamentary polity, Parliament embodies the will of the people. It must, therefore, be able to oversee the way in which public policy is carried out so as to ensure that it keeps in step with the objectives of socio-economic progress, efficient administration and the fulfilment of the aspirations of the people as a whole. One of the important functions of modern Parliaments is, therefore, to oversee the Executive through detailed investigations into the governmental activities.

Ensuring Executive Accountability to the Legislature

Parliaments in different countries derive their investigatory powers from the Constitutions of the respective countries or, as in the case of the United Kingdom, their long-established customs, usages and conventions. Nowadays, this power of the Parliament is taken for granted and one cannot conceive of the efficient functioning of the Parliament without it. The content and form of investigatory powers of the Parliament, however, vary from country to country depending upon the type of the Constitution it has adopted. In fact, the strength of the Parliament lies in its ability to investigate into the administrative actions of the Government.

Parliamentary Committees

A considerable amount of the monitoring and investigatory work required of the Parliament to fulfil its constitutional responsibilities is carried out by the Committees set up by Parliament to exercise legislative control over the administration. Parliamentary Committees today have become an essential feature of the modern Legislature. The growth and centrality of the Parliamentary Committees now appears to be a global phenomenon. As the content and form of parliamentary control over the Executive vary from country to country, depending upon the type of the Constitution it has adopted, different Parliaments may constitute different types of Committees. Variations may also be noticed even within the same Parliament over a particular period of time. Yet, they cannot be considered to be altogether different since Legislatures across different political systems share certain common attributes, especially in respect of the nature of the functions they perform. Based on the experience of Parliaments all over the world, the Committee System with adequate powers has been widely acclaimed as the best suited system for a detailed scrutiny of the administrative actions with a view to enforcing Executive accountability to Parliament and through it to the people at large.

In almost all the Legislatures, Parliamentary Committees are vested with adequate powers to complete detailed examination of the governmental activities. Through these Committees, the administration comes in direct contact with the Parliament. In fact, the investigation by the Parliamentary Committees is severe. These Committees frown on shortcomings, lackadaisical attitude and incompetence of the administration and they do not let off the guilty. They keep the administration on their toes so that the misuse of money and administrative powers, and faults of like nature are prevented.

In order to successfully fight corruption in public life, Parliaments, in their capacity as the country's supreme political authority, should also ensure that State/public institutions are so transparent and accountable as to be able to withstand corruption or permit its rapid exposure. Clear and fair legislations should, therefore, be enacted to provide adequate and precise sanctions against those who engage in corruption. To resolutely fight organised corruption, Parliaments should take legislative measures to enhance competition in economic life by taking a firm stand against monopolies and oligopolies. To the extent that corruption can arise as a result of too many laws, Parliament will have a primary duty to streamline and simplify the same. They can also exercise their control function by examining the compatibility between different laws so as to make them deterrent to corruption by suitable amendments/changes. Besides, in view of the growing international dimensions of corruption, Parliaments throughout the world should support international cooperation instruments by coming together so that the drive against corruption can be given a global dimension.

The role of Parliaments in fighting corruption is thus pivotal. Parliaments can fight corruption through the legislations they pass to reduce unaccountable official discretion, through monitoring of the behaviour of Government officials and through keeping an unremitting vigil over the working of public services at the national and regional levels. Laws and regulations along with adequate oversight and enforcement can deter frauds and corruption in public life. In fact, the role of Parliaments is increasingly one of creating an environment in which corruption is made difficult.

Accountability through Access to Government Information

Access to Government information is yet another tool for ensuring integrity in public life. Access laws play an important role in reducing corruption in Government institutions. By making available information about procurement processes and successful bids, access laws make it more difficult for officials to engage in unfair contracting practices. Similarly, access to information about decisions regarding the conferral or withholding of other benefits by Government institutions or regulatory or policy decisions reduces the probability of such decisions to be taken for improper reasons. Access laws may also make it more difficult for senior officials to take larger policy decisions that are not supported by sound analysis. Access to information about the formulation of policy can reveal instances in which policy decisions were taken without careful considerations of the advice provided by the professionals within the public service.

Over the last thirty years, many Governments have formally acknowledged the right of access to information. In some instances, Governments have adopted administrative codes that establish a right of access, although the more common approach is to give access rights the force of law. Formal recognition of access rights is now essential if institutions hope to maintain popular legitimacy. Though access laws typically establish a presumption that citizens have a right to inspect information within public institutions, no Government recognises an unqualified right of access to information. Before adopting an access law, three questions—all pertaining to the scope of the access rights—must, therefore, be settled. First, what institutions should be subject to an access right? Second, under what circumstances is an institution that is subject to access law justified in withholding information? Finally, what steps can properly be taken to moderate the cost of administering an access law?

So far as Parliament's access to Government information is concerned, Parliament gets informed in many ways. But inasmuch as the Government is the greatest single monopolist of information, Parliament and its members have to rely very heavily on Government Departments for their information requirements. To call for information is perhaps the greatest power of Parliament. Parliament's right to be informed is unlimited except if divulging of certain information is likely to prejudice vital national interest or the security of the State. So far as the activities of the Government are concerned, it is the duty of the Government itself to feed Parliament with information which is full, truthful, precise and supplied in time. This is done by the Ministers making statements on the floor of the House, laying reports and papers on the Table of the House or placing documents in the Parliament Library. All these constitute a wealth of information which becomes immediately public and can be used to raise discussions in the House.

Another method for the Parliament to be informed and receive necessary feedback is through the reports of various Parliamentary Committees. In the process of their scrutiny, the Committees ask searching questions and collect extensive and valuable information from the Government Ministries and Departments, public undertakings, etc. under examination. All these devices help Parliament to ensure Executive accountability in an effective manner.

Auditing and Corruption

Role of Supreme Audit Institution

Audit has an important role in the overall scheme of anti-corruption measures. An effective and independent audit system checks fraudulent practices in financial dealings in the Government and the Public Sector. In modern times, the orientation of governmental activities is more towards socio-economic programmes. In this changing scenario, auditing has become a functional necessity of all developmental processes and the onus of auditing the governmental as well as quasi-governmental institutions rests with the Supreme Audit Institution of the country. The need for an independent and objective scrutiny of the burgeoning volume of transactions by public bodies is even greater in developing countries whose resources by and large in relation to their needs are severely limited.

The main responsibilities of the Supreme Audit Institutions (SAIs) include the provision of authentic information for the Parliament and through it for the citizens on the satisfaction of the demands of public interest in respect of spending of public money, along with making proposals concerning the rectification of problems based on its findings and experience. The ultimate goal of the work of SAIs is to promote a balanced operation of the general governmental system and the economy as a whole. By using their investigative authority, the SAIs address fraud and corruption in governmental functioning and strive to foster a strong financial management—based on reliable, sufficient and timely reporting, including disclosure of deviations—and effective internal control system.

The Supreme Audit Institution is designated differently in different countries. For instance, it is designated as the Comptroller and Auditor-General (C&AG) in India, U.K., Bangladesh, Nigeria, Pakistan and Zimbabwe; Auditor-General in Bhutan, Botswana, Malaysia, Malavi, Nepal, Sri Lanka, Thailand, Uganda and Zambia; Board of Audit and Inspection in Korea; Dian of Audit in Libya; Audit Officer in Maldives; Comptroller in Israel; Board of Audit in Japan; and Commissioner of Audit in the Philippines. The tenure of office of the Head of SAI also varies from country to country. He is appointed by the Head of the State or the Parliament. In U.K., the C&AG is an officer of the House of Commons. In the countries where political structure is federal in nature, each Province/State has its own separate Auditor/Auditor-General except in India, Pakistan and Malaysia. In India and Maldives, the accounts of the Government are also computed and maintained by audit institutions. There is sufficient constitutional or legal authority in most countries for the audit to function. The nature and scope of audit actually carried out varies considerably. For instance, in Belgium, the law requires revenue authorities to supply individual tax files for audit. But in practice, the scope of audit has continued to be an examination of the collections and their accounting. The same is the case in many other countries also. In India, the duty of the Supreme Audit Institution to audit receipts is unqualified and the nature and scope of audit is left entirely to his discretion. He has been given access under the Audit Act to all departmental records which include tax assessment files also. The audit report submitted by the Supreme Audit Institutions are usually placed before the Parliament. However, these are placed before the King in Bhutan.

Fraud and corruption are serious problems affecting all countries in varying degrees and, therefore, the SAIs can and should endeavour to create an environment that is unfavourable to fraud and corruption. The SAIs should be independent so as to be able to effectively contribute to the fight against corruption.

As recommended by the Ninth International Anti-Corruption Conference held at Durban in October 1999, the role of SAIs in combating corruption can be intensified by focusing audit strategy more on areas and operations prone to fraud and corruption by developing effective risk indicators for fraud; establishing an effective means for the public dissemination of audit reports and relevant information, including establishing good relationship with the media; producing relevant audit reports that are understandable and user-friendly; establishing closer cooperation with other national/international bodies fighting corruption; exchanging experience on fraud and corruption with other SAIs; encouraging the establishment of personnel management procedures for the public service that selects, retains and motivates honest and competent employees; monitoring compliance as part of the on-going audit process; and establishing a well publicised means to receive and process information from the public on perceived irregularities.

All the countries have sufficient legal provisions in place to penalise and prosecute corrupt practices but the presence of loopholes in the framework of regulations cannot be ruled out. The SAIs should, therefore, have the mandate to make suitable recommendations to the legislative authorities on perceived shortcomings in the practical implementation of the rules and regulations so that suitable legislative measures can be taken by Parliaments to effect necessary changes in the rules and regulations that bring about unintended or negative consequences.

SAIs publish their audit reports annually after submitting them to Parliament to provide an independent opinion on the matter subjected to audit. It should, however, be kept in view that excessive time lags between actual audits and the publication of the reports prevent their timeliness and relevance.

Generalising about the work of SAIs is not easy, given the very difficult and complex arrangements that exist across the countries. However, all SAIs share a common purpose aiming to help safeguard public funds and provide an independent view of Government spending. While arrangements have grown in the specific circumstances of each country and perhaps could not be readily translated to countries with very different administrative structure, there is clearly much that each SAI can learn from others and create much ground for comparison and cooperation. Despite their different positions within the constitutional and administrative arrangements, all SAIs have means by which their independence, their ability to decide their own work programme and their freedom to report are safeguarded.

The nature of corruption is influenced by a country's traditions, principles and values. Although the SAI can do little about the fabric of society, it can influence the approaches used to combat this problem. The SAI can, through concerted actions, play a vital role in promoting a culture that rejects waste and values honesty, responsibility, and the rational utilisation of economic wealth.

India's Supreme Audit Authority

The Supreme Audit Authority of India is designated as the Comptroller and Auditor General of India (C&AG). His office has been created under the Constitution which came into force on 26 January 1950. The Constitution provided for the same duties and powers for the C&AG as were applicable to the Auditor-General of India (before the commencement of the Constitution) in relation to the accounts of the Dominion of India and the Provinces, respectively, pending legislation by Parliament. This legislation was passed in 1971 and titled as the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971. This Act has been amended from time to time to incorporate the changes necessitated by evolution of financial administration in the country. The Constitution itself has made it mandatory that the reports of the C&AG relating to the accounts of the Union should be submitted to the President who shall cause them to be laid before each House of Parliament. Similarly, in the case of States, the C&AG is required to submit its reports to the Governors of the respective States for being laid before the concerned State Legislatures. In brief, the main duties and responsibilities of the C&AG, as they stand now, are:

- to audit all moneys paid into and expended from the Consolidated Fund of the Union and that of the States/Union territories;
- to audit all transactions of the Union and of the States relating to the Contingency Funds and Public Accounts;
- to audit the accounts of bodies and authorities substantially financed by the Government;

- to audit the accounts of Government companies and statutory corporations which have provision for audit by the C&AG and other bodies and authorities even though not substantially financed by Government, at the request of the President/Governor or at his own initiative after President's/Governor's approval;
- to audit Appropriation Accounts and Finance Accounts of the Union to ensure that they have been correctly prepared;
- to compile Accounts of the States and Union territories; and
- to certify the net proceeds of any tax or duty, which is to be shared with and passed on to States.

Since the magnitude of governmental expenditure, receipts and other transactions has grown in geometrical progression and so has the number of Government companies, corporations, autonomous and semi-financed bodies, the C&AG's responsibilities have grown enormously over the years. The responsibility has been discharged admirably by the successive C&AGs. Techniques of audit have been adapted to cope with the growing volume of work. Interaction of C&AG with his counterparts and membership of international bodies like the International Organisation of Supreme Audit Institutions (INTOSAI) have benefited both India and other countries.

The C&AG presents every year more than a dozen reports on Central Government Departments (including Civil, Defence, Railways, Posts & Telecommunications and Scientific Departments) and about ten or more reports, including appraisals, on the Central public sector enterprises. The reports contain instances of an amazing range of public waste, negligence, loss of public revenues, non-achievement of project achievements, negation of policy parameters and the like. Notably some important cases successfully investigated by anti-corruption agencies such as the Central Bureau of Investigation in the past were based on information exposed in audit reports presented by the C&AG.

Effective prevention of corruption requires the supreme audit authority to be a person highly reputed for his integrity, professional competence and independence, and free from bias of any kind. There is an immediate need to lay down formally in law a procedure for the appointment of the supreme audit authority so as to ensure that a person with a high reputation for integrity and known for his professional competence and independence, with a good background of audit work, alone fills the post.

How to Promote Ethical Behaviour in Public Life?

Corruption lives and flourishes in its own peculiar economic and social contexts. It cannot be reduced only by means of auditing or parliamentary surveillance. The application of these means is successful only if corruption is no longer encumbering the society as a mass phenomenon. Changes should be achieved at the very root of the problem which is possible only if efforts are made to promote ethical behaviour, particularly in public life.

The most important factor for the success of any organisation is its leadership—political and administrative. Public services must develop ethical standards which help them achieve their best performance. If an organisation cherishes high standards, the behaviour of the individual who enters it is inevitably influenced. As has been said in the Gita, "we should pursue the path of excellence without fear or favour and work ceaselessly to achieve the objectives."

An attitude of dedication to the set goals of an organisation should be an indispensable trait of the top leaders. This is their primary source of self-confidence to operate and function effectively and efficiently and in turn to transfer the same to the public. It is not just performing development linked administrative duties; it is taking action required to bring about structural changes and growth in the economy. This needs to be supplemented by the belief in the organisational goals.

The aggravation of material greed has, as a reaction, bred corruption at all levels, especially among the political elite. Through the dominant influence of the present material civilisation and the ideal of enjoyment fostered by it, even the basic framework and moral fibre of the society has been affected. There is no limit to the fraud, hypocrisy and moral degradation that are being practised in the name of politics. In the present time, most of the problems in public administration are emanating from political corruption and interference. The credibility gap between the political and administrative leadership is on the increase. No organisation can progress until and unless its leaders are above board. The devaluation of moral values and ethical ideals in public life and administration today has given rise to the rat race for position, power and pelf by any means. The political elite must, therefore, demonstrate integrity and instil faith among the people about their fairness and impartiality.

No organisation can develop until and unless the personnel working in the organisation are ethically committed to achieve its ideals. A certain degree of informed zeal and identification with tasks entrusted to a functionary with a view to ensuring higher levels of performance are the hallmark of excellence in public service. All organisations can function and achieve excellence provided all its members strive ethically to pursue the goals of the organisation earnestly, sincerely, wholeheartedly and with dedication. In the ultimate analysis, people will get good administration only if and when there is a strong enough demand for this. While it cannot be denied that there is a demand for good and responsive administration on the part of the vast majority of the people, this has yet to find proper expression through the political processes.

Many well-intentioned and technically sound programmes aimed at solving problems have been frustrated by the lack of popular acceptance and community participation. We find a great deal of alienation between the people and the organisation. This has undermined the legitimacy, effectiveness and credibility of the administration. We, therefore, need to promote harmony and mutual trust between the people and the administration. The objective of public relations should be to increase the prestige and goodwill of the public organisation by safeguarding them against unwarranted attacks as well as to remove the genuine complaints and grievances of the people. This would create confidence in the minds of the people about the competence, honesty, impartiality and sincerity of the public service.

Administrative morality is part and parcel of the general morality of the community. The success of any Government depends upon the effective collaboration of its citizens. This is possible only if the educational system and mass media are oriented to character-building among the people.

Illiteracy is a great obstacle in the path of development and education is the backbone of democracy. Education helps an individual develop his potential, increase his productivity and become a useful and responsible member of the society. It is, therefore, imperative to increase the literacy rate to bring about all-round development. This apart, without the understanding, active cooperation and involvement of all members of the society and a knowledge and motivation on their part as to how to obtain the most from the public services provided, much of the time, money and effort invested in the services provided to the people can be lost. There is, therefore, a great need to inculcate civic consciousness, patriotism and discipline among the citizens through education.

If in a country, the administrative apparatus is to be rendered safe for posterity, the civil servants must give a better account of themselves by standing up for the basic values of an honest and efficient administration.

But what are the prospects of such a thing happening? These are not bright at all, considering the 'culture of compromise' that is fast spreading among the rank and file of civil servants, high and low.

Creating Environment of Integrity in Public Life

The establishment and maintenance of integrity in public life and public service requires a number of elements, including legislation, regulations and code of conduct; a society whose religious, political and social values expect honesty from politicians and officials; professionalism among officials; a sense of elitism among senior civil servants; and a political leadership which takes both public and private morality seriously. But integrity is not an end in itself; rather, it is a path leading to the delivery to the public of the services they are entitled to receive from those who govern them. In this context, the Nolan Commission (U.K. 1995) has suggested the following seven relevant principles applying to all aspects of integrity in public life:

(i) *Selflessness:* Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

(ii) *Integrity:* Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

(iii) *Objectivity:* In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

(iv) *Accountability:* Holders of public office should be accountable for their decisions and actions to the public and they must submit themselves to whatever scrutiny is appropriate to their office.

(v) *Openness:* Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

(vi) *Honesty:* Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(vii) *Leadership:* Holders of public office should promote and support these principles by leadership and example.

Conclusion

The lack of integrity in public life produces strong negative side-effects and reduces organisational effectiveness. Today, corruption has become a cancer on the bodies of individual countries and on the international community as a whole. At a time when the global economy—with instant communications and movements of funds across the globe, permitted by modern technology—is becoming a reality, corruption has become a phenomenon of not only national but also international concern. Though emphasis on the promotion of ethical behaviour in public life is increasing throughout the world and joint strategies are being developed to combat corruption that threatens to undermine and weaken democratic systems and economic growth, parliamentary and audit institutions and all such other institutions which exist for the furtherance of democracy, human rights and the Rule of Law have to take a lead in fighting this scourge. Let us strive to set up an organised society with social democracy and high human values. If timely warnings are not taken care of, social upsurges are bound to occur.

IMPERATIVE OF ETHICS IN PUBLIC LIFE

J.S. Verma

> "All persons possessing a position of power ought to be strongly and awfully impressed with an idea that they act in trust and are to account for their conduct in that trust to the one great master, author and founder of society."
>
> —*Edmund Burke*

The message is clear. Investment of all public power is in trust and coupled with accountability to the source of that power. In a democratic republic, the source of public power is—'We, the People'. The exercise of public power must, therefore, always be for public welfare, and accountability of all public men, however highly placed, must be enforced by an effective mechanism. Our constitutional scheme spells out this principle.

Erosion of Ethical Values

The need to emphasize the significance of ethics in public life is itself an indication of the extent of erosion in values and degeneration of the society because of morality being at a low ebb. Corruption has become an integral part of the prevailing culture and a way of life under the pretext that it is a global phenomenon. India suffers the ignominy of ranking high amongst the most corrupt nations in the world. Scams, each involving thousands of crores of rupees, have become a regular feature with the machinery to investigate the economic offences and to punish the culprits becoming ineffective. The element of deterrence is almost non-existent. The public perception is that the machinery for enforcement of accountability is itself controlled by those whose accountability needs to be enforced. All institutions of law enforcement lack accountability, the difference between them is only in the degree of culpability. The nexus between public men and law breakers through various corrupt routes and at times common source of funding has emerged and remains effective, posing serious threat even to the national security, apart from eroding the national economy. The working of the system is put on hold. The situation warrants a serious debate on the issue and concerted efforts for infusion of ethics in public life to arrest and reverse this trend.

The Positive Side

However, there is also a bright side to the picture. Notwithstanding the dismal part, the brighter side is the vast general progress made by the country since Independence. The credit for the significant progress goes to the national effort in that direction. India has become a nuclear power with wholly indigenous effort. It is reckoned as a super power in the region attracting worldwide recognition which is never readily forthcoming. Our scientists have done us proud. Our trained doctors, engineers and other technocrats are in demand even in the developed countries. In spite of political instability in neighbouring countries, we have had throughout a functioning democracy with respect for human rights. From famine and a state of food deficiency requiring import of foodgrains, we now have surplus food stock after the Green Revolution. If there are sporadic starvation deaths even now, it is not because of shortage of foodgrains in the country but because of corruption and mal-administration which has led to the curious result of a larger quantity of foodgrains being wasted and consumed by rodents than is needed to feed the starving. Economic growth has been progressive in spite of the parallel growth of black money; and the percentage of literacy has risen even when the total number of illiterates is large because of the population explosion and non-fulfilment of the promise under article 45 of the Constitution. The State of Kerala provides the striking example of women's empowerment through literacy enabling all-round human development, including population control through a lower fertility rate. These are some of the self-evident indicators of our nation's simultaneous progress. It is obvious that our progress would have been much greater had the values and ethics in public life not been on the decline.

A Value-based Society

A strong, value-based society has been an essential component of the Indian polity. The core value of ethics and morality was the driving force in the freedom struggle. The values practised in a society determine its worth and the polity. Value is a relationship between a person and an environmental situation which 'evokes an appreciative response in the individual'. Moral values are inseparably related to values in general. The society is composed of individuals and, therefore, the values of the individuals and groups constituted by them are reflected in the values of the society. This is how the societal standards affect the worth of a nation at any point of time. Democracy is a way of life which rests essentially on moral foundations, whereas the totalitarian conception is a denial of some of the basic postulates of human dignity. Democracy is based on the conviction of the worth and dignity of the human being. Implicit in democracy is the Rule of Law which helps to eliminate passion, prejudice and privilege, providing for redress against arbitrariness and tyranny. In a republican democracy like India, the political sovereignty vests in the people—'We, the People'. These ideals have constituted the core values of the Indian polity and are reflected in the Constitution of India.

Values provide the prime motivating force behind thought, motion and action of the individuals and they have to be ethical if the action is to result in a healthy contribution of the individual to the society. The values of our pluralist society with the rich heritage of our composite culture, tempered with modernity, should provide an integrated programme for the development of modern India. Thus, the integrated value system strengthening the moral fibre of the Indian society with the determination to check deterioration of values is the answer to the present decadence in our society. The desired result can be achieved by internalization of the right values by each individual.

The values cherished by an individual control his choice of the option between available alternatives to regulate his conduct. At every juncture when we are at the crossroads, our sense of values tells us which road to take. If our values are proper then there is assurance that our actions influenced by proper values would achieve the best possible results under the circumstances. Ethics need a set of moral principles: rules of conduct. Ethics in public life must, therefore, mean rules of conduct of principles governing the actions of public men.

History educates us about the adverse effect of decline in the ethical standards on the nation. The decline and fall of the Roman Empire, a great civilization, is attributed to the decadence in the moral values of its people. Some of the essential causes of Roman decline lay in its people, their morals, class struggle and bureaucratic nepotism. Edward Gibbon in the history of the *Decline and Fall of the Roman Empire* has enumerated some significant causes of the fall of the Roman Empire. Some of the many causes of ruin of the Roman Empire are mentioned as nepotism and rampant corruption, internal strife and the abuse of materials. Will Durant, in the *History of Civilization,* describing the Roman civilization, observed that moral decay contributed to the dissolution.

The significance of national character in public affairs and ethics in public life was forewarned by Shri C. Rajagopalachari. He said:

> National character is the keystone on which rests the fate and future of our public affairs, not this or that 'ism.'

> National character depends on, and, in fact, is individual rectitude.
>
> Individual honesty must be brought into being before we can hope for improvement of national affairs.
>
> If the parched field of Indian politics and administration has to get fresh, green, life and grow, we need the monsoon of purity in national character. And the monsoon consists of little drop falling and uniting to make the rain.
>
> Individual purity of character alone can revive the parched field, let's regain our good character quickly and all will be well—politics, administration and economic conditions.

The caution and need of individual purity of character to revive the parched field, is more relevant now. Public life is a reflection of private life. It is, therefore, necessary that the private life of public men be as pure and free of blemish. There cannot be a dichotomy between the private and public life.

It is not necessary to pick out any particular area of public life or any particular profession or institution for comment or special treatment because each of them is similarly afflicted. It is not surprising, because all are composed of individuals drawn from the same society. The difference in the degree of affliction between them is because of varying standards of prevailing practices and conventions in them.

Disquieting Trends

Free and fair elections are a basic feature of the Constitution and the basis of a true republican democracy. The extent to which the electoral verdict is affected by unsavoury malpractices and the influence of muscle and money power is well-known. Criminalisation of politics along with politicisation of crime is an established phenomenon which everyone decries but no one is able to avoid. The outcome of elections does not always reflect the true will of the people and those elected are not always the true representatives of the people. There is thus erosion at the very base of the republican democracy by dilution of the participatory role of the people in governance. Public service is only the professed aim and no longer the real aim of those aspiring for public offices. The general impression is that personal interest more than public interest regulates the conduct of many public men. Electoral reforms to check this trend and to ensure free and fair elections as envisaged by the Constitution of India remains a far cry.

To curb shifting political loyalties even after election on party ticket was the object of the Anti-Defection Law (Tenth Schedule to the Constitution). In practice, it has failed to achieve the object and has increased the premium for defection in terms of personal gain. Apprehending the inefficacy of the existing Anti-Defection Law, when its constitutional validity was challenged in the Supreme Court, I had, in my dissenting opinion, declared it to be unconstitutional, hoping that an effective Anti-Defection Law would be made, removing the existing infirmities. The danger of the Office of the Speaker becoming politicised in the process was also indicated by me. Unfortunately, these fears came true very soon.[1]

The *JMM case*[2] provides another disquieting feature. The fact that the culpability of a member of Parliament accused of taking a bribe for voting in the Parliament required judicial determination is alone sufficient to depict the low ebb in public morality irrespective of the merit of that judgment. The judgment excluding the culpability of some, raises serious doubts about the correctness of that part, in addition to providing an escape route to the corrupt. Similar is the debate on the interpretation of Section 8 of the Representation of the People Act, 1951 which provides for disqualification of a candidate on conviction for a criminal offence during the pendency of appeal in a higher court. Many persons have been elected to the Parliament and Legislative Assemblies after conviction because of the interpretation made beneficial to them. This is inconsistent with the requirement of ethics in public life and the need to interpret electoral laws consistent therewith.

The Executive and the Judiciary, to some extent, even at the higher levels, are seen to be similarly afflicted. There have been instances in both the wings where, on reasonable grounds, serious doubts have been raised about the conduct of a few occupying some of the highest positions in these institutions. Suffice it to confine only to instances which form part of the public record. We have reported judgments of the Supreme Court relating to prosecution of a Chief Justice of a High Court and a judge of another High Court, and the abortive impeachment proceedings in the case of a Supreme Court judge found guilty by a Committee of Judges constituted under the Judges Inquiry Act. The perception is of the absence of an effective mechanism to enforce judicial accountability at the higher levels for want of a suitable legislation consistent with the independence of the Judiciary to prevent its misuse. This was said in my dissent in the *Veeraswami case*[3] and later on many occasions, extra-judicially. Impeachment alone has proved ineffective. In the Executive, both political and bureaucracy, there are such known instances which need not be recalled. Fortunately, their numbers are few.

The well known *Hawala case*[4] was an innovative judicial process in an attempt to enforce probity in public life and accountability of holders of public offices. The judicial process of *'continuing mandamus'* developed therein was a new facet of public interest litigation (PIL). PIL itself grew because of the public acclaim of its efficacy to activate the inert Executive to discharge its obligations and to enforce public accountability. The *Hawala case* gave hope to the people that even the highest placed are not immune from the process of law for any misdemeanour. However, the outcome illustrates that the premier investigating agency could not act effectively to discharge its statutory function even when insulated completely from all extraneous influences because of the gradual decline in its autonomous character. It filed chargesheets only to escape from the monitoring by the Supreme Court but did so in a manner which could not clear the preliminary scrutiny by the court. In either situation, it does no credit to the investigation and prosecution agency and indicates that the machinery has to be strengthened from within.

Significance of Ethics

The Recommendations of the Lord Nolan Committee on 'Standards in Public Life' in the United Kingdom set out seven principles of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership as the general principles of conduct which underpin public life and need to be restated. Referring to it in the *Hawala case*, I have also said:

> ...These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinizing the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with, instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a *prima facie* case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the Rule of Law vindicated. It is the duty of the Judiciary to enforce the Rule of Law and, therefore, to guard against erosion of the Rule of Law.

At this juncture, when the Indian Parliament is celebrating its Golden Jubilee, it is appropriate to recall the prophetic speech of Dr. Sachchidananda Sinha at the Inaugural Session of the Constituent Assembly and that of Dr. Rajendra Prasad at its Concluding Session. Both of them voiced the same sentiment and administered similar caution.

Dr. Sachhidananda Sinha quoted the American jurist, Joseph Story, who said:

> Let the American youth never forget that they possess (in their Constitution) a noble inheritance, bought by the toils, and sufferings, and blood of their ancestors; and capable, if wisely improved, and faithfully guarded, of transmitting to their latest posterity all the substantial blessings of life, the peaceful enjoyment of liberty, property, religion and independence. The structure has been erected by architects of consummate skill and fidelity, its foundations are solid; its compartments are beautiful, as well as useful, its arrangements are full of wisdom and order and its defences are impregnable from without. *It has been reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE.* Republics are created—these are the words which I commend you for your consideration—by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them. (emphasis supplied)

Dr. Rajendra Prasad, at the Concluding Session of the Constituent Assembly, said:

> Whatever the Constitution may or may not provide, *the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves.... After all, a Constitution, like a machine, is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them.* ...We can only hope that the country will throw up such men in abundance...Would to God that we shall have the wisdom and the strength to rise above them, and to serve the country which we have succeeded in liberating. (emphasis supplied)

History teaches us the significance of ethics in public life and that we ignore it at our own peril. Joseph Story administered that caution in his exhortation to the American youth when the American Constitution was made. Provisional Chairman, Dr. Sachchidananda Sinha and the Chairman, Dr. Rajendra Prasad, administered that caution in their prophetic speeches at the Inaugural and Concluding Sessions of the Constituent Assembly. Shri C. Rajagopalachari and other statesmen repeated the exhortation. We have seen in our own life time the danger inherent in ignoring the established norms of public morality. The unbounded potential of the Indian people is evident from the progress made by the nation despite the steady erosion in the standards of public life. All we need to do is to usher in a renaissance of values which are inherent in the Indian polity but appear to have been suppressed at present by the dominating narrow interests. The Fundamental Duties of every citizen enumerated in article 51A of the Constitution of India is a reiteration of those values and a pragmatic course for 'We, the People', as the keepers of the Constitution to discharge our participatory role in the governance of the democratic republic.

Ethical values in public life are no novelty to the Indian ethoes. The renaissance may appear a tall order in the prevalent culture but not so in the land of Mahatma Gandhi—the Father of our Nation. In the words of C. Shurz: "Ideals are like the stars. We never reach them but, like the mariners on the sea, we chart our course by them."

In the Golden Jubilee year of the Indian Parliament, let us pledge our commitment to this end and aim to take the nation to the pinnacle of glory. Ethics in public life is the sure route to this end.

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[1] *Kihota Hollohon v. Zachilhu and others,* AIR 1993 SC 412.

[2] *P.V. Narasimha Rao v. State,* AIR 1998 SC 2120.

[3] *K. Veeraswami v. Union of India and others,* 1991 (3) SCC 655.

[4] *Vineet Narain v. Union of India,* AIR 1998 SC 889.

PROBITY IN PUBLIC LIFE

A.K. Antony

Introduction

Our great leader Pandit Jawaharlal Nehru, while assuming the office of the Prime Minister of India, described himself as the first servant of the Indian people. The definition given by him for this highest office of independent India is no doubt suited to each and every public man. Dedicated and selfless service to the people, as has been proclaimed by him, is the basic principle of public life. Panditji, who had the privilege to learn to be in the service of India and the imperative of truthful conduct at the feet of the Father of Nation, described the Mahatma as the light which would illuminate our country for many more years and a thousand years later. It is a fact that Mahatma Gandhi was a public man endowed with all moral and ethical values and he stands out in history as a light house to guide all public men of succeeding decades. But it is pitiful that now-a-days, the number of public men ready to accept and practice ethical values in public life as evinced by Mahatma Gandhi, is on the decline. Undoubtedly, Gandhiji is the symbol of the perfect public man history has ever produced among mankind.

Ethics in Public Life : A Rich Legacy

The civilisations of India and other countries differ drastically. Perhaps, they are poles apart. The western civilisation worships force, whereas the eastern values discount it; the former is based on wealth but the latter emphasises on culture and learning. Our *Puranas* paved the way for a society with a strong base in moral ethics. Our ancient rulers administered the country in accordance with the principles contained in the Puranic regulations. Our freedom fighters were role models of unblemished purity in public life. But sometime after the attainment of Independence, we seem to have lost that pristine quality of purity in public life.

Position in Post-Independence India

After Independence, we gained political power. Naturally, public men who were in the freedom movement became heroes in the eyes of the people. The affection of the people helped them to attain high offices in Government. The instant access to power tempted a few of them to deviate from the traditional path of austerity and morality. This resulted in the practice of corruption and nepotism. At first, society was very much concerned about the degradation in moral and ethical standards of public men. But gradually, degradation became a common phenomenon and society was tempted to accept the reality and failed to react. The lack of resistance from the society encouraged all sorts of evils in public life.

Corruption and Corrupt Practices

Corruption is undoubtedly an evil which destroys the society and the image of public men. In fact, corruption is an abstract term which cannot be explained convincingly as long as we view it with a tint of subjectivity. The ideas about corruption within the society also sometimes vary according to group differences and self-interest. Customs, traditions and laws framed by society for its smooth work also often play a vital role in determining the ideas about corruption. Any action contrary to the established social norms or practices may be deemed as corrupt. The advice given by the great Chinese thinker Confucius to his followers about two thousand and six hundred years ago may perhaps give a simple clarification about corruption. He told the world "not to do a thing to others which you will not allow others to do to you". The *Bhagvad Gita* contains another directive in this regard "Let not the fruits of action be your object nor let your any attachment be to inaction". The above two directions should guide public men for all times to come.

A study of the primitive society would suggest that corruption was rare in those days, perhaps due to the dominance of a strong tradition in determining conduct and the immediacy of control which was possible in small units. But when the political unit became large, pre-requisites for certain types of professions gave birth to corruption. Corruption requires two parties, and as long as people are not actuated by a healthy civic sense and desire undue advantages for themselves, they will offer bribes and more often than not the public servant refusing bribes is prone to come to trouble.

Corruption in public life is generally linked with acceptance of illegal money but it is only one of the many forms of corruption that prevails in the society. It is a fact that acceptance of illegal money attracts the attention of both who receive it and those who give it but there are many other forms of corruption which are unnoticed but are really more dangerous and inflict untold miseries on the people. Very often, lack of knowledge, inefficiency, favouritism, personal convenience, negligence of duty, caste and community feelings, desire to help friends, the satisfaction of one's ego, etc. encourage corruption. Now-a-days, in our country, corruption of such forms prevail in many parts; communal riots, terrorism endangering the safety of the country, etc. are the result of such forms of corruption. No doubt, corruption can be controlled if the people in different walks of public life keep society above their own narrow self and carry out their duties honestly and with a missionary zeal.

Of late, the talk of corrupt practices has become as popular as corruption itself. Everybody, including the common man in the street, talks about corruption and condemns it but makes no fruitful effort to curtail it. Persons who condemn corruption are not always ready to discard it. Very often, they practice corruption to satisfy their needs, but condemn others for similar acts. It is a fact that we are making rules and regulations to curb corruption in all forms by establishing *Lokpals, Lokayuktas,* etc. and also to check and punish the corrupt. But day by day corruption in all forms has been on the increase alarmingly in the society. It is essentially a socio-economic problem; social reforms, legislation and imbibing of traditional feelings of ethics will help curb this evil to an extent.

Conclusion

There is a decline in the behavioural standards of public men. Lack of mutual respect also creates problems in the society. The alarming deterioration of moral standards in public life alerted our Parliament to make a self-regulatory mechanism to enforce ethical and moral values in public life. Such mechanisms alone cannot wipe out the evils in public life and cleanse the system. A positive change in the mind set and concerted action by both public men and the common people is the main remedy to this problem. Public men must understand that sacrifice of the self for the society is one of the noblest of goals, but unfortunately very few people attach any importance to this. The purification of public life should certainly start from the top. Public men must speak out what they think and implement it sincerely. Then only can they instil confidence in the people at large.

NEED FOR PROBITY AND TRANSPARENCY IN PUBLIC LIFE

Murlidhar C. Bhandare

It was Bapu, the Father of our Nation, who said: "An ounce of practice is more than tons of preaching." Ethics is defined as the discipline dealing with what is good and bad or right and wrong and with moral duty and obligation. Ethics, therefore, is to be practised rather than preached.

The citizens of our country have made great sacrifices and observed the highest discipline in their struggle for Independence. Bapu ensured that the struggle was non-violent, despite violence and repression on the part of British. He also observed the highest values in public life.

The last fifty-five years of Independence, however, have shown a sharp decline in moral values and a growing feeling of frustration, if not anger, amongst the people against politicians in general. Casteism and communalism, in conjunction with corruption and criminalisation, have taken firm roots in our society. All these have had a deleterious impact on human development, including education, health, employment and the environment. Today, India rates amongst the ten most corrupt countries in the world. Simultaneously, according to the U.N. *Human Development Report 2001*, India ranks 115 out of 162 countries, undertaken for studies in human development.

The recent U.P. Legislative Assembly election which returned a hung Legislative Assembly is ample proof of the maladies that have been devastating the body politic of our country. In this election, every party without exception fielded candidates with criminal records. It is depressing to note that 122 candidates with criminal records have already been elected to the U.P. Assembly. This is more than 25 per cent in a House of 403 members.

Lacunae in the System

Ceiling on Election Expenditure

Every legislator, in a way, starts with by-passing the law. Section 77 of the Representation of the People Act, 1951 caps a limit on election expenditure by a candidate. These limits are highly unrealistic. There are constituencies which have over a million voters. The maximum limit of permissible election expenditure is Rs. 15 lakhs. Even a single telephone call or a postcard giving information about the candidate and his party to each voter would cost much more than this prescribed limit. The return filed by almost every member of Parliament of his election expenditure does not, as of necessity, disclose the correct figure. Though the substantial expenses in an election are shown as party expenses, there is large scale fudging of the accounts.

In the recent past, the malady of corruption has also entered the elections to the Rajya Sabha. In the elections to the Upper House in 1998 from Maharashtra, some legislators are rumoured to have made between Rs. 15 and Rs. 20 lakhs each for casting his vote in favour of a particular candidate. At least two candidates, are alleged to have spent Rs. 5 crore each. Buying of seats and votes in an election where only the legislators are voters signals the ultimate destruction of values in our society.

Tenth Schedule

The amendment of the Constitution providing for Anti-Defection Law has also failed. The Speakers of various Assemblies have unfortunately been inconsistent while dealing with complaints against defectors under the Tenth Schedule. Today, defection is not for principles but for money and position. A simple remedy is to provide that no member who has defected from his original party will be entitled to hold any public office like that of a Minister. The disqualification to hold public office is sufficient deterrent to check defection.

Criminalisation of Politics

The question that arises is, to whom shall we teach ethics? Which code of conduct will govern those legislators who do not hesitate in the least to evade the law and show scant respect for constitutional, legal and moral values? A person is disqualified for the membership of Parliament and State Legislatures if he is convicted for the offences mentioned in Section 8 of the Representation of the People Act, 1951 and sentenced for the period stipulated therein. The law presumes citizens to be innocent till they are proved to be guilty. Undoubtedly, it is the primary duty of a political party not to field candidates with criminal records. This duty has been consistently and vociferously acknowledged by every political party—to be observed only in its breach. However, the bane of criminalisation of politics is also because of the failure of the criminal justice delivery system in our country. A criminal trial is delayed not for years but for decades. In the meantime, the criminal can go on contesting elections with impunity. Phulan Devi languished for eleven years in jail without her trial even reaching its logical conclusion. She eventually became a member of the Lok Sabha. Her innocence or guilt was never proved.

Justice delayed is not just justice denied but justice defeated. If a trial were to end in two years, appeal therefrom within a year, we would see the end of this abhorring factor of criminals being fielded in such large numbers in elections. Then the disqualification for contesting elections on the ground of conviction for criminal offences would be effective. In *Jayalalitha's case,*[1] the Supreme Court categorically held that a person who is convicted for a criminal offence and sentenced with an imprisonment for a period of not less than two years cannot be appointed as a Minister or Chief Minister under article. 164(4) of the Constitution and restrained her from acting as the Chief Minister of Tamil Nadu. She had to wait till she was acquitted in her appeal against conviction and only then became entitled to contest the Assembly election. She won her election and was sworn in once again as the Chief Minister.

Corruption

Corruption in public life is another major issue. The *J.M.M. case*[2] dealt with the corruption of members voting for cash. Surprisingly, a majority of the Constitution Bench of five judges of the Supreme Court held that members taking bribe for voting inside the House were immune from any legal proceedings in a court under article 105(2) but members *giving the bribe* were liable to be prosecuted and punished. Article 105(2) provides: "No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by them in Parliament or any Committee thereof". What is protected by parliamentary privilege under this article is free speech and free vote. A vote which is sold and purchased does not come within the immunity provided by article 105(2) and neither the spirit nor the letter of the article permits such interpretation. Yet, fifty years after our Independence, the Supreme Court has held that a member of Parliament selling his vote for a price is immune from any prosecution under the criminal law. In any society, corruption is abhorrent to the ethical standards of conduct in public life. The Supreme Court gave its decision on 17 April 1998. However, till today, no steps have been taken to amend article 105(2). Let every member of Parliament assert without any delay as Lord Salmon has said: "a privilege of member of Parliament is a charter for freedom and not corruption".

In U.S., Canada, Australia and most Commonwealth countries, a legislator can be prosecuted for accepting bribes intended to influence his vote or decision on any question brought before him in his official capacity. The delay and dithering on the part of our Parliament is beyond comprehension. Let it be the first item on the legislative agenda of Parliament as it enters its 51st year to amend article 105(2) disowning any privilege enabling a member to be corrupt with immunity and impunity.

It is in this connection that some aspects of ethics in public life, particularly for legislators, become relevant and urgent. They are: (i) financial disclosure by a member of Parliament of his/her income, assets and liabilities immediately after their election/nomination as a member of the House and at the end of their tenure as also whenever any change occurs; (ii) equally imperative is the requirement of 'Maintenance of Register of Members Interest'. The Committees on Ethics of the Lok Sabha and the Rajya Sabha have strongly recommended both these measures.

However, these measures have also limitations on account of the massive income tax evasion and money laundering in our country. Only around 2.5 per cent of our population pays income tax. All political donations are, therefore, mostly in cash and under the table. Unless there is greater honesty and transparency in political donations, the conduct of individual members is also not going to undergo any substantial change.

Time Lost due to Disruptions

It is a common spectacle these days to watch on television, members of Parliament meeting not to debate or discuss issues or bills but to get the House adjourned by unruly conduct and rushing to the well. Disorderly conduct has become the order of the day. The number of disturbances in both the Houses is phenomenal and inexcusable. Many important bills are passed without much discussion. It is unnecessary to emphasize that if debates and discussions are absent in the Legislatures, parliamentary democracy itself will be in peril.

All political parties are equally responsible for this failure that is costing the exchequer a huge loss considering that the expenditure during the Session of Parliament is Rs. 80 lakh per day. The role of the Opposition is no longer restricted to oppose and depose the Government but more in obstructing and walking out of the House.

Ethics Committee : A World View

The code of conduct and ethics and its observance and implementation has been a matter of concern for all democratic countries in the world. In

U.S.A., the Senate has the Select Committee on Ethics and the House of Representatives has a Committee on Standards and Privileges.

In U.K., the Committee on Standards and Privileges looks into the complaints of its members' conduct. It has the assistance of an independent Commissioner appointed by the House, who is charged with giving advice to members about questions of propriety and conduct, including the interpretation of the code of conduct, and with investigating complaints against members and reporting to the Committee on Standards and Privileges.

Ethics Committees of Parliament

Both the Lok Sabha and the Rajya Sabha have Ethics Committees. These Ethics Committees have submitted extensive reports on ethical norms and code of conduct and the measures for their implementation.

The Ethics Committee of the Lok Sabha has formulated the following general ethical principles:

- Members must utilise their position to advance general well being of the people.
- In case of conflict between their personal interest and public interest, they must resolve the conflict so that personal interests are subordinate to the duty of their public office.
- Conflict between private, financial/family interest should be resolved in a manner that public interest is not jeopardized.
- Members holding public offices should use public resources in such manner as may lead to public good.
- Members should keep uppermost in their mind the fundamental duties listed in Part IV of the Constitution.
- Members should maintain high standards of morality, dignity, decency and values in public life.

Similarly, the Ethics Committee of Rajya Sabha, in its First Report adopted on 15 December 1999, has laid down the following ethical principles:

- Members must not do anything that brings disrepute to the Parliament and affects their credibility.
- Members must utilise their position as members of Parliament to advance general well being of the people.

- In their dealings, if members find that there is a conflict between their personal interests and the public trust which they hold, they should resolve such conflict in a manner that their private interests are subordinated to the duty of their public office.
- Members should always see that their private financial interests and those of the members of their immediate family do not come in conflict with public interest and if any such conflict ever arises, they should try to resolve such conflict in a manner that public interest is not jeopardized.
- Members should never expect or accept any fee, remuneration or benefit for a vote given or not given by them on the floor of the House for introducing a bill, for moving a resolution or desisting from moving a resolution, putting a question or abstaining from asking a question or participating in the deliberations of the House or a Parliamentary Committee.
- Members should not take a gift which may interfere with honest and impartial discharge of their official duties. They may, however, accept incidental gifts or inexpensive mementoes and customary hospitality.
- Members holding public offices should use public resources in such manner as may lead to public good.
- If members are in possession of a confidential information owing to their being members of Parliament or members of Parliamentary Committees, they should not disclose such information for advancing their personal interests.
- Members should desist from giving certificates to individuals and institutions of which they have no personal knowledge and are not based on facts.
- Members should not lend ready support to any cause of which they have no or little knowledge.
- Members should not misuse the facilities and amenities made available to them.
- Members should not be disrespectful to any religion, and work for the promotion of secular values.
- Members should keep uppermost in their mind the fundamental duties listed in Part IVA of the Constitution.
- Members are expected to maintain high standards of morality, dignity, decency and values in public life.

The All India Conference of Presiding Officers, Chief Ministers, Ministers of Parliamentary Affairs, Leaders and Whips of Parties on "Discipline and Decorum in Parliament and Legislatures of States and Union territories", held in Parliament House on 25 November 2001, adopted by its Resolution a complete Code of Conduct as also the procedure for dealing with complaints regarding breach of Code of Conduct and punishment for such breach. There is thus a complete unanimity in the country over the observance of ethics in public life, appropriate and exhaustive resolution obtaining a Code of Conduct for the legislators and the machinery for its implementation.

Conclusion

While conferring Fundamental Rights on our citizens, our Constitution also lays down for them Fundamental Duties. A member of Parliament should be a role model in observing these duties. He must be a motivating force for the community to strive towards excellence in all spheres so that the nation constantly rises to higher levels of endeavour and achievement.

In U.K., the Nolan Committee advocated seven ethical principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership for the benefit of all who serve the public in any way. Of course, the ultimate Code of Conduct for the members of Parliament even went beyond these seven principles.

Independence, integrity and industry truly constitute the three 'Is' which every member should be proud to possess. This would also remove the impression that a member is often a combination of a sycophant, hypocrite and parasite. A member is called 'honourable' because he is expected and ought to follow the highest code of honour.

Privileges and ethics are two sides of the same coin. The best privilege a member of Parliament should claim is to be an ordinary citizen of India. He must set an example by offering to stand in a queue and not jumping it. It is sad to see how the members of Parliament feel a sense of importance when they delay flights. The V.I.P. syndrome among our politicians in public life is anathema to a society of equality and equal dignity which our Constitution mandates. It is also a self-defeating process for observance of ethics in public life. It is easy to point a mirror to others but people in public life must hold a mirror before themselves constantly to see that there are no stains on them in public life.

The problem is not solved merely by laying down the Code of Conduct. It is meaningless unless it is implemented. The need of the hour is to immediately frame rules prescribing the Code of Conduct and its implementation. This should be done before we enter the 51st year of our Parliament.

It is only the spirit of service and a faithful observance of the Code of Conduct that will ensure the restoration of the bright image for our representatives in Parliament in public life—so very essential to lower our international rating in corruption and uplift our rating in human development.

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[1] *B.R. Kapur v. State of Tamil Nadu* (2001) 7 SCC 231

[2] *P.V. Narasimha Rao v. Union of India* (1998) 4 SCC 626

PART XI : ELECTORAL REFORMS

ELECTION COMMISSION AND ELECTORAL REFORMS

T.S. Krishna Murthy

Introduction

India is a sovereign, democratic Republic with a parliamentary system of Government. Democracy forms the basic structure of the Constitution of India. Fundamental to the democratic polity is the concept of sovereign powers vesting in the people, governing themselves through their elected representatives. As a representative parliamentary democracy, India has a well-established electoral system to enable the citizens with voting rights to choose the peoples' representatives to the Parliament and the State Legislatures. The Constitution of India has vested in the Election Commission the superintendence, direction and control of the entire process for conduct of elections to the Parliament and the Legislature of every State, and to the Offices of the President and the Vice-President of India.

Over the last five decades, thirteen General Elections to the House of the People and nearly three hundred elections to the State Legislative Assemblies have proved that democracy has taken deep roots in the country. Free and fair elections form the bedrock of our democracy. We have a comprehensive structure of laws to administer and conduct our elections. Elections are conducted according to the constitutional provisions, supplemented by laws enacted by the Parliament and the various rules and regulations and orders issued under the statutes.

Our Electoral System : Some Key Issues

While any amendments in the Acts are to be passed by the Parliament, modifications in the rules are to be carried out by the Government in consultation with the Election Commission. The experience of conducting elections to the Parliament and the State Legislatures during the last fifty years and more has brought to the fore certain instances of deficiencies and loopholes in the electoral system, as no system can ever be said to be perfect. Conscious of its responsibilities, the Election Commission has been constantly reviewing the situation and proposing, from time to time, changes in the law and rules to the Government for improving our electoral system.

Here, I would like to point out some key issues which are agitating the minds of the people and require to be addressed urgently in the interest of free and fair elections. These issues are:

- Criminalisation of politics
- Money power in elections
- Regulating the functioning of political parties
- Representation of women in the Parliament and the State Legislatures
- Voter participation and voter awareness

The Election Commission, being alive to these issues, has expressed its views thereon in various fora and suggested certain remedial measures to overcome or meet the challenges.

Criminalisation of Politics

One issue that has engaged the concern of large sections of the country is about the criminal elements entering the electoral field and succeeding in winning elections. Even the Parliament, during the Special Session held to mark fifty years of our Independence in August-September, 1997 had shown a great deal of concern about the increasing criminalisation of politics which was also reflected in the Resolution adopted at the Session. It is believed that there is a growing nexus between the political parties and anti-social elements which is leading to criminalisation of politics, whereby some of those who stand charged as accused are now joining the election fray and even getting elected in the process.

Section 8 of the Representation of the People Act, 1951, provides for disqualification of persons convicted by a court of law from contesting elections. While mere conviction leads to disqualification for certain offences, there are certain other offences for which conviction should be accompanied by sentence of imprisonment for a prescribed period to result in disqualification.

No doubt, we have a conceptual problem as it is difficult to define as to who a criminal is. Under the jurisprudence, a person is presumed to be innocent unless proved otherwise and convicted by a court of law. Thus, in strict legal parlance, a criminal may be one who has been convicted of a crime by a court of law. But a common man perceives otherwise. In his eyes, a person who has been charged with certain types of offences and is under trial is also a criminal. He considers it criminalisation of politics if a history-sheeter or a notorious bad character involved, though perhaps not finally convicted, in various crimes of a heinous nature, like murder, dacoity or rape, is contesting elections and getting elected. The problem gets accentuated because of long delays in getting the court cases decided.

Election Commission's Views

To minimise the impact of this sad state of affairs, the Election Commission has gone to the extent of suggesting that any person who is accused of any offence punishable with imprisonment for five years or more should be disqualified, even when his trial is pending, provided that the competent court of law has taken cognizance of the offence and framed the charges against him. Parliament and the State Legislatures are apex law-making bodies in the country and should be composed of persons who enjoy high reputation in the eyes of the general public and are perceived by them to be men of integrity. A person who is charged of a serious offence and about whose involvement in that offence, a court of law is *prima facie* satisfied, and has, therefore, after weighing the evidence before it, framed charges against him, should not become a potential law-maker by being permitted to contest elections. The Constitution of India recognises the principle of reasonable restrictions on rights of individuals, even on the Fundamental Rights guaranteed under the Constitution. The Supreme Court of India has also upheld the doctrine of reasonable restrictions on the exercise of the individual rights by the citizens of India. In the Election Commission's considered opinion, a person who is facing trial in a serious offence, if kept out of the electoral fray till he is exonerated of the charge, should not have a legitimate grievance, as such restriction on his right to contest elections would be a reasonable restriction in the greater public interest and for bringing sanctity to the august Houses which are the supreme law-making bodies of the country.

Pending amendments to the statutes to keep the criminals away from the electoral arena, the Election Commission issued an order in August, 1997, making it mandatory for all candidates to file affidavits about their convictions in cases covered by section 8 of the Representation of the People Act, 1951, which disqualifies persons convicted of those specified offences. The Commission also clarified that the conviction by the trial court itself is sufficient to attract disqualification and even those who are released on bail during the pendency of their appeals against their convictions are disqualified from contesting elections. It was a small step forward in combating the situation, and has been greatly welcomed by the common people. It is indeed gratifying to note that the Supreme Court has now settled the law on the point conclusively in *B.R. Kapur v. State* *of Tamil Nadu and another* and the Commission's view stands fully vindicated.

Money Power in Elections

The vicious role played by money power in deciding elections is one of the most critical problems facing the electoral system. Further, money power contributes to muscle power which results in significant violence. There is no doubt a limit prescribed by our electoral law as to the amount that can be spent by individual candidates in connection with their elections. But this limit is seldom followed, the campaign expenditure of candidates exceeding the limits in many cases. The result is that contesting elections has become a costly affair, forcing quality people to stay away from the field.

Election Expenditure

Section 77 of the Representation of the People Act, 1951 provides that every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure incurred in connection with the election or authorised by him or his election agent between the date on which he has been nominated and the date of declaration of the result thereof. There is an explanation clause to the said section which provides that the expenditure incurred by a political party or by any other association or body or persons or by any individual (other than the candidate or his election agent) shall not be deemed to be expenditure incurred in connection with the election or authorised by the candidate or his election agent for the purposes of section 77(1). This explanatory clause has created an escape route of substantial nature and provided an easy way of circumventing, if not negating the legal requirement. Not only the political party which has sponsored the candidate, but the relatives, friends and supporters of the candidate can also spend any amount of money on the election of the candidate and yet all that amount would not fall within the expenditure limit of the candidate.

The Supreme Court of India has, in several judgments, observed that the law as it exists today does not provide any practical check on election expenses for which it was intended. The Apex Court also observed that the ceiling on election expenses is a mere eye wash and the explanation given to Section 77(1) encourages corruption by underhand methods.

EC's Views

The Election Commission is of the view that the said explanation to section 77(1) should be omitted to ensure a level playing field in the election process between the contesting candidates and the contesting political parties and also to ensure that the role of money power in elections and the election arena is curbed significantly, if not totally eradicated.

Regulating the Functioning of Political Parties

There is a great deal of debate about the sources of funds of political parties and the manner in which the funds are expended by them. Under the Income-Tax Act, income of political parties is exempted from income-tax. But the parties are required to file their annual returns of income duly audited. In a petition filed by the *Common Cause Society* (AIR 1996 SC 3081) on this issue, the Supreme Court observed that most of the political parties were not filing their annual income tax returns.

Financial Accounts of Political Parties

The Election Commission has always been of the view that political parties should be required to compulsorily maintain their accounts properly and get them audited by agencies specified by the Commission. There is a strong need for transparency in the matter of collection of funds by the political parties and also about the manner in which those funds are expended by them. Therefore, the political parties must be required to publish their accounts annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite.

In pursuance of the decision of the Supreme Court in the case of *Common Cause Society*, the Commission now calls for the accounts of expenditure made by the recognized political parties during the election period, from the date the elections are announced and till the completion of the election process. The Commission has recently decided that these accounts will be put in public domain for scrutiny by the public and others interested. The formats in which such returns are asked for by the Commission have also been revised and made more comprehensive; the parties may submit all details of election expenditure incurred not only by the central headquarters but also by their State and constituency level units, both on the party's campaign and on the individual candidates.

Donations by Companies

A related issue is the donation by companies to political parties. The current provision on this issue, as per the statute, is that a company in existence for more than three years may contribute an amount not exceeding five per cent of its average net profit. It is a debatable point whether there should be a total ban on donations by companies to political parties. After all, the political process and the activities which a political party legitimately engages itself involve heavy costs which have to be met by funds coming through certain channels. Moreover, if trade unions and other organisations are allowed to contribute to political parties, there seems to be not much ground in the argument that companies should be banned from making donations to political parties. Efforts should be made to create an atmosphere where there is more transparency in financial dealings with proper public disclosure rather than take extreme measures which would only drive these activities underground and away from the public gaze. Similarly, the issue of State funding of elections has been debated often but one is not certain whether this can put an end to money power in electoral politics. In any case, there is an urgent need for a law to regulate the functioning of political parties and ensure inner party democracy along with financial propriety.

Representation of Women in Parliament and State Legislatures

For the last several years, a demand has been made for adequate representation of women in Parliament and State Legislatures. The demand finds strong support from the Seventy-third and Seventy-fourth Amendments to the Constitution made in 1992, providing for assured representation of not less than one-third of members in every Panchayati Raj Institution for women. A move is afoot, therefore, to amend the Constitution, and to provide for such reservation in the Lok Sabha and the State Legislative Assemblies as well.

The idea has generated a serious debate amongst the political parties and in intellectual circles. Views differ on several aspects of the proposal, such as the percentage to be reserved; a further internal reservation for women belonging to Scheduled Castes, Scheduled Tribes and Backward Classes; the methodology and wisdom of allocation and rotation of the constituencies that may be reserved for women candidates, etc. The destabilisation effect of regular and continuous rotation of a large number of parliamentary seats is also a matter under discussion. On all these and other issues, the matter seems to be embroiled in serious differences, with no early solution in sight.

EC's Views

In the Election Commission's view, while it is necessary to substantially increase the representation of women in the Lok Sabha and the State Legislative Assemblies, the issue needs to be looked at from a wider perspective. The objective must remain to have a much greater presence of women without in any way diminishing the vibrancy of political action and the resultant effectiveness of parliamentary institutions. The aim is to achieve a genuinely active participation of women in the political process, and their adequate representation in the decision-making bodies at all levels of our system. Therefore, the need is to create such conditions as may give them increased opportunities of organic and harmonious growth in the Indian polity.

A suggestion was put forward that instead of following the reservation route, with the possibility of further internal reservation within reservation, it may be more desirable to insist that all recognised political parties give adequate space to women in the political process. This can be easily achieved by a simple legal provision which will require all recognised political parties to set up a specified percentage of women candidates in all the State and parliamentary elections that they take part in. While the political parties will get the requisite flexibility to choose the constituencies and the women candidates that may be most appropriate in their judgment, women political workers will also have to quickly come forward for effective work in the political arena. The current representation of women in the Lok Sabha is about nine per cent only. This proposal envisages that the parties will fix such percentage for women candidates that the accepted success rate is enough to ensure a sizeable increase in the presence of women in Parliament and the State Assemblies. If this idea is taken up, the controversy of further internal reservation also will become unnecessary. It will be open to political parties to give as many tickets as they please out of the percentage fixed to candidates from the less fortunate sections. The Commission has observed that this mechanism of ensuring a minimum percentage of women candidates has apparently worked well in the Northern European countries. The suggestion has the merit of not requiring constitutional amendment, eliminating current controversies, and going forward with a simple amendment in the Representation of the People Act. It will be for the political parties to decide the percentage to be so fixed.

Voters' Participation and Voters' Awareness

It is the experience of the Election Commission that voters' participation and voters' awareness have not been very encouraging even though the percentage of voters exercising their franchise has been around sixty. Though it will be too premature to consider mandatory voting in India for all citizens as in Australia because of the attendant implementation problems, it is felt that urgent efforts are required to promote voters' participation and voters' awareness of the electoral politics. Even though persons of the age of eighteen and above are allowed to vote, it is not very certain that all those who are entitled to vote have taken steps to include their names in the electoral rolls and also to exercise their franchise at the time of the elections, especially in view of the apathy of voters in the urban areas. And if this trend is allowed to continue, it may result in a skewed electoral system. It is here that the voluntary organisations can play an active role so that the voters are aware of the issues involved in the electoral battles and actively participate in exercising their franchise. A suggestion has also been made to consider a legislative amendment to provide for recording negative vote by voters in case the voters do not approve any of the candidates contesting the elections so as to attract those voters who are not exercising their franchise on the ground of non-approval of the contestants in the elections. This will also send out a message to the political parties to put up good quality candidates and provide secrecy to the voters exercising the negative vote.

The above are some of the key issues on which Parliament may like to devote its focused attention and bring about the much-needed electoral reforms so that democracy in the country becomes stronger, more mature and more meaningful.

ELECTORAL REFORMS—NEED OF THE HOUR

P. Shiv Shanker

Introduction

It is trite to say that elections are the *sine qua non* in any democracy. Through elections, people participate in public affairs and express their will and intention in changing the Governments in a peaceful and orderly manner. This lends legitimacy to the Governments. Periodic elections in democracies pave the way for the smooth transfer of power.

The nature and content of elections have been changing with the change in values. The degeneration in values leads to the degeneration of the electoral practices and processes both. India and the developing democracies in general suffer from this malaise today and it is for this reason that we often think of electoral reforms. The degeneration of the electoral system poses a serious threat to democracy. Many enlightened voters keep themselves away from the electoral processes, corroding the true representative and democratic character of a polity. This leads to an inevitable threat of democracy wanting in its spirit and practice. More than anything else, the negation of values poses a danger to the societal system in any country.

Need for Reforms

It is not my intention to chronicle the vices that have crept into our electoral system. However, it is evident that the purity in the system prevailing in the early days has gradually been fading, resulting in the demand for electoral reforms. The aberrations in the system which have come to the fore deserve careful attention. While everyone is concerned, it appears that the solution is becoming elusive and then a mirage like situation develops. We seem to grope unendingly. Human ingenuity, backed by selfish motives, beguiles the system lending an impression that a solution to the problem is still far away.

We stand at the crossroads today. The elections in our country are not pure, free and fair. The electoral lists are tampered with. Independence and impartiality of the concerned bureaucrats are also wanting in many respects. But for the Judiciary, the system could have been on the verge of collapse. Even the people's wishes do not seem to be reflected in the voting pattern, especially so when a large chunk of the electorate does not cast its vote for various reasons. Democracy itself stands on test.

We have accepted the system of parliamentary democracy based on elections with first-past-the-post approach. This could be termed as a legacy of the British and the system has been successfully operating for centuries in certains countries. However, the first-past-the-post system has come to face certain challenges in our country. A proper remedy or a substitute has not been suggested from any quarters till date. Patch-work solutions may succeed for the time being but in the long run, they prove to be futile. The country is afflicted with poverty and illiteracy; we also have to manage a society encompassing in its hold diversity in religion, region, caste, community, language, dress and eating habits. Many suggestions have come forth from different quarters. Some of them have been tried from time to time and a few have received the imprimatur of the Parliament as well, but human ingenuity has skilfully circumvented the same and succeeded in defeating the purpose.

Role of Political Parties

While a fool-proof remedy seems to be a far cry, political parties have to necessarily take the responsibility in curbing money power, muscle power and the like. It should be realised that the lack of ideological moorings in diverse parties has been gradually eroding the system giving rise to illegalities in the electoral system. Political parties have to appreciate and work out the importance of their role in a democracy and bear the ultimate and actual responsibility of addressing the problems faced by the electoral system in our country.

Jagannath Rao Committee

Parliamentary Committees and Commissions were constituted from time to time to address the maladies. Conscious of the erosion of the electoral system, the Jagannath Rao Committee was the first one to be constituted which submitted its report to Parliament in 1971. The Committee did find the List System of representation to have distinct advantages and consequently felt the imperative of strengthening of the party system through proportional representation in the Legislatures. The Committee, however, did not recommend it as it felt that the system to be effective required a literate electorate.

Tarkunde Committee

In 1974, a Committee consisting of six members headed by Shri Tarkunde, a former judge of the Bombay High Court, was set up mainly to go into the question of the use of money power in Indian elections and misuse of official authority, etc. The Committee finalised its report in 1975 with certain recommendations which could not entirely be translated into practice.

Dinesh Goswami Committee

Another Committee on electoral reforms consisting of representatives of political parties was constituted under the chairmanship of the then Union Law Minister, Shri Dinesh Goswami which submitted its report in May 1990. The Committee recommended the strengthening of the Election Commission and desired the initiation of steps towards the Government funding of elections, besides suggesting legal sanction of certain provisions of the moral code of conduct, etc.

V.R. Krishna Iyer Committee

During 1994, a Committee headed by Justice V.R. Krishna Iyer, a former judge of the Supreme Court, further examined the various aspects of the issue of electoral reforms. Justice D.A. Desai, a retired judge of the Supreme Court, released the report in May 1994. The Committee suggested that the promotion of communalism by a political party should result in its de-registration and the same be disqualified for contesting elections. They also denounced the practice of a political party bearing the name of region, race or caste. They also made recommendations in respect of the maximum expenditure to be incurred by candidates for the parliamentary and Assembly elections and approved of electronic voting, amongst others.

Indrajit Gupta Committee

The Indrajit Gupta Committee was constituted as a result of the all-party meeting held in May 1998. It consisted of seven members and submitted its report in January 1999 to the Union Home Ministry. It examined the issue of the State funding of elections and recommended partial State funding in kind, etc.

Recommendations of the Election Commission

It deserves to be noted that the Election Commission being concerned with free and fair elections had also been making various recommendations from time to time. The practical difficulties confronted by the Commission were sought to be resolved in the manner they deemed proper. The Government and the Parliament have also been seized of the matter and have been taking various steps in order to plug the loopholes in the system but in the ultimate analysis, in matters of this nature, unless proper customs and conventions are established by political parties themselves based on values and enforce the same on their own members, the solution will remain a far cry.

State Funding of Elections

Over the years, the idea of State funding has gained ground. The present Government also seems to be favourably disposed to the idea. It is difficult to comprehend as to how State funding would curb the prevalent money power. The moneyed men, with black money or otherwise, would in any case utilise the occasion to spend their ill gotten money, notwithstanding State funding. It is always an unequal fight between the haves and the have-nots.

Reforms, a Must

Elections have become too expensive in our country. Muscle power is reducing the elections to a farce. Caste and community feelings are eroding the societal system. By-elections are putting an additional burden on the political parties and the Government. The number of independent candidates is also increasing which erodes the strength of the established political parties. While various measures suggested and acted upon are no doubt helpful, such suggestions alone would not be able to eliminate or even reduce the vices of money power, muscle power, etc. Consistent with the principle of democracy, some ways will have to be found to reduce effectively these electoral vices. The society may not tune itself to radical changes and, therefore, ways will have to be found to make amends with the least inconveniences to all concerned. One such way could be a slight change in the first-past-the-post system of the contesting candidates. Instead of the candidates, other things remaining the same, if the party symbol is substituted thereto and the political parties are called upon to submit the list of their candidates to the Chief Electoral Officer at the outset, then, there will be a case of reduction in money power since the personal interest and involvement of the candidates will not be there. Muscle power would be considerably reduced as few would indulge in the same for the sake of the party. Caste and community considerations will also not have the present effect. This will also enable all leaders to work and canvas for the party all over the State instead of confining themselves to any single constituency. The party candidates according to the seriatim in the list submitted will automatically represent the party in Parliament or the State Legislature based on its electoral strength. No by-election would be necessary since in the case of the demise of a party candidate, the next candidate from the list already submitted by the same party would become the member of the Legislature or Parliament as the case may be. Independent candidates would no more be able to pose any threat. It is worth noting that by merely raising the deposit amount by amending the Representation of the People Act in 1996, the number of contestants for the Thirteenth Lok Sabha had come down to 4,648 as compared to 13,952 for the Eleventh Lok Sabha. Despite this, if it is deemed necessary, a provision should be made for the independents to seek election under certain strict conditions without jeopardising the party system. The only defects that could be pointed out in such a system are that the party bosses will be all-in-all in the nomination of candidates and the personal interest of the candidate in a constituency or his answerability to the electorate would be lacking. With the party bosses becoming supreme, the situation even now is not much different. On the question of answerability and personal involvement of a candidate, the party is bound to take care of the constituency, as it stands substituted for the candidate. That apart, the party can always nominate one of the elected candidates to the constituency to take care of the needs of the electorate. These difficulties are not insurmountable. It is undoubtedly a type of a List System which does not seem to prevail anywhere but may suit Indian democracy. This suggestion will go a long way in curbing diverse electoral vices. Needless to say, this suggestion is in addition to various other practical reforms already suggested or undertaken.

It should be clearly understood that the ultimate panacea to electoral reforms lies with the people themselves and the need of the hour is reformation in the character of the people. A value based electorate alone can be the ideal citizens; after all, the people get the Government they deserve. Political parties have to change their style of functioning and assume the role to conform to the ideals of which this country in particular and humanity in general have been proud of.

CONSTITUTIONAL AND ELECTORAL REFORMS FOR A STABLE PARLIAMENTARY SYSTEM

Vasant Sathe

Introduction

India had opted for a Constitution based on the system as is prevalent in the Westminster pattern of democracy of the United Kingdom. We hoped that we will evolve a two party system as in the United Kingdom and even in the presidential form of democracy operating in countries like the United States of America or France.

Although we adopted a written Constitution as against the unwritten Constitution of the United Kingdom, we failed to provide for the formation and recognition of political parties in the Constitution itself. The political parties are recognized by the Election Commission and now have a place under the law of defection. Under the Constitution, every citizen has a right to contest any election by standing even as an independent candidate. We have learnt by our experience that this has helped both criminal and corrupt elements, having muscle and money power, to enter the Legislature thereby virtually making a mockery of the parliamentary system. We have also witnessed hundreds of independent candidates making ballot papers ridiculously large.

Electoral Reforms

It would have helped if under the Constitution itself it was provided that a citizen of India, to be eligible for contesting an election, must be a member of a registered or a recognized political party under the Constitution. This is essential, because the parliamentary system of democracy is based on the party system. Hence, if a citizen, who has every right to participate in the political process seriously, wants to contest, he must join a political party of his choice, or form one, get it duly registered and only then offer himself as a candidate, to represent the people. This one provision, if incorporated in our Constitution will eliminate a lot of mischief and use of money and muscle power by the criminal and corrupt elements. This step, will not only ensure a sense of discipline in the candidates but would also make the law of defection easy to implement.

All that will then be required is to provide that if a person having stood for an election on the platform of a particular political party changes his affiliation for whatever reasons, he will have to go before the electorate to seek a fresh mandate and sanction for his changed stand. This one provision in the Constitution and in the anti-defection law will set at rest much of the confusion and opportunism operating today, which is leading to corruption at the very root of our parliamentary democracy.

Strengthening Institutions of Governance

Having thus brought sanity in the basic electoral process of our parliamentary democracy, the next important step would be to strengthen the machinery of the parliamentary institutions. A parliamentary system of democracy is based on the principle of the existence of three major institutions *viz.* the Legislature, the Executive and the Judiciary, all having been established under the provisions of the Constitution and all functioning independently in their spheres of jurisdiction. Although the principle of separation of jurisdiction is accepted, in practice under the parliamentary system, the Executive happens to be a creation of the Legislature, where the Executive Head whether in the States or in the Centre, is elected by simple majority of the popularly elected representatives and this Executive, even for its day-to-day survival is dependent on the 'one member' majority in the Legislature. The Executive is thus spending most of its time and energy in ensuring its simple majority in the Legislature.

Political Instability and Role of Political Parties

Thus, for want of two main political parties at the national level, a situation of dependence on coalition of ideologically different forces has come about. The only uniting factor for these parties or groups is the glue of power and the moment a clash of interest occurs, the Government collapses like a pack of cards causing fresh elections and instability. This has also led to the emergence and growth of regional parties and groups who primarily have their local or regional interests at heart. Both ideology and larger, value-based principles, are thrown overboard and become victims of narrow, selfish motives. In the process the national interest is totally ignored and sacrificed.

Electoral College to Elect a Prime Minister

The best way to meet this critical challenge would be to bring stability to the Executive by ensuring its independence within the parliamentary system and under the provisions of the Constitution. This can be achieved by getting the Prime Minister elected directly by an electoral college consisting of the elected representatives from the Panchayats to the Parliament. Today, even the members of the Panchayats are elected under the statute. Similarly, there are elected representatives to Zilla Parishads. Municipal Committees, Municipal Corporations, Legislative Assemblies and both the Houses of the Parliament.

All these elected representatives to the statutory bodies should constitute an electoral college for the purpose of electing the Prime Minister of India. It would consist of about a million elected representatives throughout India, down to the last village Panchayat. The election should be by the method of single transferable vote and on proportional representation basis as is the case for electing the President of India.

New Provisions for Removing Prime Minister

We shall then have to incorporate a new 'article 74A' in the Constitution for making a provision for the election of the Prime Minister. Article 75 of the Constitution can thus be suitably amended to provide that the Prime Minister of India, elected as per article 74A, shall be appointed by the President as the Head of the Council of Ministers. Clause 3 of article 75 shall also have to be amended to provide that the Council of Ministers shall be collectively responsible to both the Houses of Parliament, provided that a no-confidence motion can be passed only by two-third majority of votes of both the Houses and supported by at least fifty per cent of the Legislative Assemblies of the States in the same proportion from all regions.

Prime Minister : A National Integrator

The biggest advantage of the above provisions will be that the Prime Minister will be elected by the elected representatives of the entire nation and will have the highest democratic mandate and sanction behind him. He will truly be a representative of the people of the nation and this will help the process of unity and integration. When the entire nation through its electoral college will have to elect one person as its leader, automatically two national parties will gradually emerge to back one single candidate, as has happened in all stable and advanced democracies. It is obvious that such a person, as a national candidate, will have to be backed by a pre-election organization, as a post-election grouping of interested parties will be of no use. Initially, some groups may come together on a long-term basis to back one candidate and this process would lead to their merging as a national political party.

Thus, a minimum of two political parties would get consolidated at the national level and this will provide a clear-cut alternative and electoral choice to the electorate of India. This will provide a stable national Government elected in the best democratic manner through a clear majority votes of the electoral college as because of the proportional representation and single transferable voting system, the Prime Minister will automatically get more than fifty per cent votes to be elected.

Today, the Prime Minister is elected by only a majority of the Lok Sabha whereas the members are themselves elected by the first past-the-post method and thus represent a minority of the electorate in their constituency. As is the experience of the present coalition era even a person who is the leader of a minority party or group can become the Prime Minister by an opportunistic power alliance, with a doubtful mandate, which may be fragile and short-lived throughout. Hence a change in the system of election as proposed will prove to be a blessing for parliamentary democracy.

The main objective of the Legislature in a democracy is to perform legislative functions, *i.e.* of enacting laws, passing and approving the Budget and other financial demands and exercising supervision and vigilance on the administration and the Government. For a healthy, democratic administration, the Executive must be allowed to function without the Democles' Sword hanging over its head and day-to-day suspense and suspicion in its mind about its very survival. Parliament will continue to have the most important power of approving the Budget of the Government. It will also be able to supervise the functioning of the Government through various Committees, including Standing and Consultative Committees. It is not necessary or desirable that a Prime Minister who will be elected by a national electoral college should be liable to be removed from office in a summary manner on a flimsy ground or because of the vested interest of a small, dissatisfied group. For accountability and responsibility, stability is also a necessity. An unstable and shaky Government can hardly be a responsive and responsible Government; it will not have the time to function, what with the constant interference from its partners.

Thus, considered from all angles, some changes in the Constitution and the electoral system will have to be brought about if we want not only to save and strengthen parliamentary democracy, but also to have a strong and stable national Government and to achieve the economic objectives of building a great, self-reliant and powerful nation.

ELECTORAL REFORMS —A MUST

O.P. Sharma

Introduction

We, the people of India, can legitimately be proud of being the citizens of the world's largest democracy. The holding of regular and periodic elections based on universal adult suffrage in a country like ours with nearly 500 million electorate spread over the States and union territories of varied sizes, and nearly 5.5 lakh polling stations, including those located in sky high and snow-clad mountains in the North, scattered tiny islands in the South, thick forests in the East, and vast tracks of marshy and desert-lands in the West is indeed a very hard and challenging task which no other democratic country in the world has to perform. As a perceptive analyst said: "It is, therefore, quite natural that the operation of our electoral system attracts global attention and acclamation. If there be any success in the working of India's parliamentary democracy during a long span of over four decades, and that too, in a state of poverty, illiteracy and backwardness, the credit would obviously go, in no small measure, to its people who have commendably displayed their maturity of judgement through their native intelligence and commonness in choosing and also changing the Government according to their choice".[1]

The holding of free and fair elections does make its impact on the political scenario of the country. However, after the first two decades, electoral malpractices started to surface which indeed made a dent on the process of free and fair elections. Simultaneously, there has also been a marked deterioration in the functioning of our Legislative Bodies which witnessed repeated indecorous conduct on the part of the elected representatives. During the Golden Jubilee Celebrations of Indian Independence, the President, Shri K.R. Narayanan voiced the national concern when he said: "I cannot but voice a pervasive sense of public concern over the frequent departure from order and decorum in parliamentary behaviour. Scenes of frayed tempers, often degenerating to violent acts in the well of the House, bring no credit to our democracy. Our people take democracy seriously. Let us not betray their faith in it—

our most precious legacy." He cautioned that it is a matter of the deepest regret that a great cynicism prevails in the public mind about politics and administration. Floor-crossings and cross voting in power games are no longer rare transgressions of democratic norms. The President recalled a speech of Dr. S. Radhakrishnan in 1947 in which he emphasised the need to destroy corruption in high places. Shri Narayanan added: "unfortunately, those words are true today, if not truer."

The Election Commission, the Parliament and the Central Government have tried from time to time to address the ills afflicting our electoral process. As per the records of the Election Commission, there were about 1500 candidates in the fray for the 13th Lok Sabha who had criminal antecedents. Let us now look into some of the deformities in our electoral process.

- In India, a candidate is elected on the basis of simple majority, meaning, mostly a candidate is elected without getting 50 per cent votes.
- The use of black money is another problem although there is a ceiling on expenses; however, an effective mechanism has yet to be developed for checking the use of black money in the elections.
- The use of violence and muscle power have been on the increase. An effective machinery and a strong political will have to be developed to combat this before this malice takes dangerous proportions, threatening the very foundations of our democracy.
- In India, voting is a privilege and not a duty. The impact of the indifference of the voters has a telling effect on the electoral outcome.
- There is no procedure to ensure the accountability of an elected candidate as by way of say, for example, recall of a representative.

In order to ensure free and fair elections, we will have to point out the areas where immediate attention is needed. Some such areas are:

- Use of black money
- Religious vote banks
- Indifference of voters
- Misuse of official machinery by the ruling party

- Bogus voters
- Slow legal process in confronting problem areas.

All these problems need urgent attention. Various Committees and Commissions have given their recommendations. Certain measures need to be taken on a priority basis to improve the system. These include:

- Make the ceiling on poll expenses realistic.
- Take early action towards State funding of elections.
- Political parties should disclose all their income sources and all their expenditure in elections. This should be checked by the Election Commission.
- Election Commission should be empowered to take strong penal action against booth capturing and such other malpractices.
- Any candidate found involved in booth capturing should be debarred from contesting elections for at least six years.
- Any candidate convicted by a court of law should be debarred from contesting elections till he is cleared by an appellate court.
- If any candidate dies during the election process, election should not be suspended; the process should continue and the party should nominate a new candidate, within a reasonable time.
- The Dinesh Goswami Committee recommendations on electoral reforms should be considered and implemented immediately.
- There should be a roster system for reservation of seats.
- Electronic voting should be improved and strengthened.
- Electronic machines should be used for counting of votes to avoid manipulations.
- In case of booth capturing, re-election should be held in the entire constituency.
- Identity cards should be introduced immediately.

If we look at the composition of the Twelfth Lok Sabha, several interesting factors come to the fore. The number of parties having upto three members in the House is as high as twenty. There are seventeen parties whose membership ranges between 4 and 20. There is only one party other than the BJP and Congress which has a membership in the range of 30-35. All the above 38 parties have a membership in the range of 1–35. The remaining 320 members come from BJP and Congress, besides 6 independents. Do these members demonstrate a national outlook?

Interpreted in this perspective, the verdict of the people is in favour of a two-party system. In fact, the scattering of votes among the 32 parties only reflects the weakness of our electoral system.

In the true spirit of democracy, the Government should be formed on a majority vote system. But is it happening? In the present era of coalition politics, majority and stability are nowhere visible. Electoral reforms cannot be confined to mere amendment of the election law or tinkering with rules and procedures relating to the conduct of elections. It is indeed a part of the entire endeavour towards the purification of public life.

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[1] T.N. Dher, at the Seminar on Electoral Reforms, organised by the IIPA, UP Chapter and Department of Public Administration, Lucknow University, 1997.

PART XII : INDIAN LEGISLATURES— A VISION FOR THE 21ST CENTURY

DISCIPLINE AND DECORUM IN LEGISLATURES

Rajnath Singh

It is of paramount importance for the proper functioning of parliamentary democracy that we have adopted for ourselves that discipline and decorum are maintained in the Legislatures. The Constitution of India provides for independent functioning of the Legislatures. The legislators have, under the Constitution, the right to express their views in the House on matters of public importance, with immunity from any legal proceeding in respect of the views expressed in the House. However, of late we have been witnessing that this freedom of speech is not always used for the purpose for which it was contemplated. Often, it is used for character assassination or for trivial personal matters. What is worse, even for a trifle, the entire House is held to ransom and it is loudly proclaimed that the proceedings of the House would not be allowed to proceed unless their demand was conceded. At times, at the very start of the day's proceedings, a demand is put forth that even the Question Hour be done away with and a particular matter be taken up forthwith. We all know the importance of the Question Hour. The members ask questions of great public importance and through supplementary questions they get a chance to elicit important information from the Government. However, the members who create uproarious scenes, shout at the top of their voice and rush to the well of the House seem to conveniently forget that they are, by their acts and behaviour, depriving the majority of the members of their valuable right to raise matters of public importance. The immunity in the House is used by them with impunity to infringe the equal rights of others.

Recently, a new development is also being noticed. Under various rules, different matters are raised by the members of the Opposition, but when the reply is sought to be given by the Treasury Benches, the members of the Opposition start shouting and create scenes with a view to preventing the reply of the Government from coming on record. This is indeed unfortunate.

In the Uttar Pradesh Assembly, time wasted due to adjournments because of slogan shouting, rushing to the well of the House and creating unruly scenes have, at times, resulted in the wastage of upto twenty-five per cent of the total working hours. Because of these disruptions, on certain days not a single minute's work is done in the House. The situation has come to such a pass that we have to pause and ponder whether democracy is degenerating into mobocracy. We should remember Churchill's words that democracy is the worst form of Government except all those other forms that have been tried from time to time. But if we do not wake up even now and condone the degeneration still further, it may not be long before people start getting disenchanted with parliamentary democracy. The need of the hour, thus, is to resolve not to allow any further degeneration of our parliamentary institutions.

As a first remedial step, we have to do introspection with a view to deciding that private interest must not be put in opposition to public good. Thus, all the political parties should follow the spirit of Voltaire which he put in these words: "I do not agree with what you say, but I will defend to the death your right to say it." We all have to keep in mind that a party can live only by growing, and intolerance brings its death. Further, we should urgently evolve a code of conduct for legislators so as to ensure that there is optimum use of the time of the House and unnecessary chaos and consequent adjournment of the proceedings is obviated. I am inclined to believe that I am not the only one to have the experience of the ruling party legislators complaining that owing to the frequent adjournments they are deprived of their right to raise important public issues. Their complaints tend to remind me of the *Tess of the D'urberville* of Thomas Hardy, when she asks "Why the sun does shine on the just and the unjust alike?" I am of the firm view that members who do not listen to the directions of the Chair and persist in raising slogans so as not to allow orderly proceedings should be treated differently inasmuch as such actions should not be considered to be covered by the privileges available to a legislator. It is imperative to find out an effective antidote to these so as to enable the House to function in the manner contemplated by the Constitution. We must not allow such members to create unruly scenes in the House. All political parties should take a decision that no member shall create any unruly scene or rush to the well of the House and cause interruption in the proceedings of the House. Further, if a member indulges in such activities, the concerned political party should expel him from the party and no other political party in the House shall admit him to its fold. Even more drastic measures may be adopted to bring in discipline in the House. If our collective wisdom deems it fit, the enactment of a law may also be considered so that our parliamentary democracy may not remain a dead phrase but instead we have a vibrant, functioning parliamentary democracy.

SMOOTH AND ORDERLY CONDUCT OF PARLIAMENTARY PROCEEDINGS

Prithibi Majhi

Introduction

In a democratic set-up, the Parliament and the State Legislatures epitomise the hopes and aspirations of the people. It enjoins upon the Parliament at the Centre and the State Legislatures to translate into reality the lofty ideals of the Constitution which we had solemnly given to ourselves in 1950, when a parliamentary system of governance came into existence with all its concomitants. Over the years, the Parliament and the State Legislatures became the grand inquest of the people with a pre-eminent position in our body polity. That being so, the following cardinal principles have become the pre-requisites for the smooth functioning of the Legislative Bodies to achieve the avowed objectives :

- Mutual respect between the Treasury Benches and the Opposition and a large measure of co-operation in the transaction of business.
- Strict adherence to the rules of procedure and ethics.
- Complying with the decisions and rulings of the Presiding Officers and working in unison to deliver goods.
- Upholding the honour, sanctity and dignity of the House.

It was our good fortune that in the early years of freedom, the Legislative Bodies of the land were studded with great visionaries and men of eminence who took the legislative functions very seriously as a mission and maintained a high degree of dignity in their public conduct. While articulating their views, they invariably adopted sober methods and maintained objectivity in dealing with the issues on the floor of the House. Despite their allegiance to different ideologies, they rose above narrow and partisan considerations and functioned in a decent and decorous manner, in a spirit of accommodation and utmost restraint, honouring the views of even those who differed widely in their approach. The end result was that they could set parliamentary traditions of the highest standard.

Transformation of Indian Polity

Over the last couple of decades, however, the national polity, economy and the social structure have undergone a tremendous transformation. Happily, though, the nation could withstand many challenges and crises, and we came to be recognized as the largest working democracy in the world. But along with the evolutionary process, complexities and tensions also grew tending to make the people restless and jittery, owing to the many weaknesses in the system. The polity and its institutions acquired new dimensions, both in their contents and contours. The predominantly single party system of the fifties and sixties has gradually given way to political pluralism which, in turn, has given birth to a plethora of political parties. As a result, single party rule, both at the Union and in most of the States, has been replaced by coalition arrangements. Simultaneously, the socio-economic background and the political equations have also changed substantially. Naturally, all these factors have had great impact on the mindset of the legislators, who often cross swords on the floor of the House without judging issues dispassionately.

Since, the Parliament or the State Legislatures, complying with the rules of the House are dynamic institutions and are open for debates on subjects touching upon the interests of diverse segments of the electorate, it is quite likely that a certain amount of heat, noise and tumult is generated in the course of the proceedings within the parameters of the rules of procedures and discipline and decorum of the House. It is the constitutional obligation on the part of the law-makers to abide by the golden rules of the House. Unfortunately, it has now become an oft-repeated experience to find that heated deliberations lead to commotion and pandemonium and, at times, even riotous scenes are witnessed in the House reducing the Presiding Officers to being helpless spectators. At times, not only the precious time of the House is wasted, but also dislocation of business of the House takes place for days together, costing the nation dearly. Again, in order to bring home their grievances and view points, members even troop into the well of the House, snatching microphones and shouting slogans. This sort of conduct not only projects the legislative bodies in poor light but casts reflection on the democratic system in our country. We are unmindful of the fact that the Constitution and the rules of the House, provide ample scope to the legislators to ventilate their grievances, through various in-built mechanisms. Most of the conflicts arise, when differing perceptions of political parties find their echo in the Legislatures, sometimes by adhering to the rules, sometimes due to the ignorance of the rules and most of the times by creating unruly scenes.

It is against this background that the Conference of Presiding Officers of Legislative Bodies in India, held in New Delhi in October 1996, took a serious note of the happenings in many of the Legislatures, and passed a Resolution which, *inter alia,* stressed:

> Conduct of the legislators inside and outside of the Houses has come to be considered as a matter of very serious concern by the people in general. This has very grave implications for the dignity of the Legislatures and the future of the democracy. In this context, the constitution of Ethics Committees by Legislatures for ensuring basic standards of probity of the members should be examined with special reference to the establishment of such institutions by Legislative Bodies elsewhere in the world.

Code of Conduct for Members

It is high time that the political parties gave topmost priority and ensured members belonging to their fold conduct themselves in a dignified and decorous manner. The people of India periodically elect over 3750 representatives to the Parliament and State Legislatures. There is a persistent feeling that political parties can play a decisive role in improving the quality of members elected to the Legislatures on their party tickets. As a matter of fact, each political party should develop a code of conduct for its members and do a good deal of screening before party tickets are given. Members with doubtful background and credentials should be kept away from the mainstream democratic electoral process, so that our polity remains clean.

Importance of Imparting Training to the Legislators

There is a great need for imparting training to the legislators to understand the subtleties and nuances of parliamentary democracy. Political education to the new generation members is another vital aspect, to which political parties should attach top-most priority and either evolve their own agenda to enlighten their members about the merits and intrinsic values of parliamentary democracy or let some other agency do the motivation. In England, political parties have their own regular curricula to upgrade the standard of members and inculcate the virtues of democracy in every potential legislator.

At present, the Bureau of Parliamentary Studies and Training of the Lok Sabha Secretariat is organising Orientation Programmes in parliamentary practices and procedures for new members of Parliament and State Legislatures. But considering the vastness of the country and the huge number of legislators, it has not been feasible to take advantage of such facilities by each and everyone. It is felt that some zonal sub-centres of BPST should be set-up to meet these requirements. In this regard, mention may be made that a similar institution sponsored by the eight North Eastern State Assemblies is coming up at Guwahati under the name "North East Regional Institute of Parliamentary Studies, Training and Research" to promote parliamentary democracy, its culture and traditions. This institution has been designed to equip our legislators with proper in-puts and develop a healthy democratic personality in them. Needless to say, it deserves full support from all quarters in the best interest of democratic life and living.

Role of the Media

One very positive development is that now-a-days, the electronic media is giving live coverage of the proceedings of the House, and as such people are getting an opportunity to watch how their representatives are performing on the floor of the House. So, if the media co-operates and continues to apprise the people about the happenings both inside and outside the House, then it would perhaps be possible to build up moral pressure on the legislators to act in an orderly manner failing which they would have to pay a heavy price. It would be an ideal way to check the decline in the democratic institutions.

Presiding Officers as Custodians of the House

Lastly, since the Presiding Officers are the custodians of maintaining discipline and decorum in the House, and they are directly involved with the tenor and tone of the deliberations, their position is very pivotal and sensitive. They have to uphold the dignity of the House without any erosion of democratic norms. The decisions and rulings of the Chairpersons are expected to have lasting impact on the mindset of the legislators. When combined with a high degree of impartiality, rulings can go a long way in containing disruptive and unparliamentary trends to a considerable extent.

Nonetheless, in the existing scenario, it has become imperative to have an extensive public debate on this burning issue and evolve a consensus to correct the aberrations which have crept in into the system and strengthen the edifice of parliamentary democracy in the country.

ENSURING ORDERLY PARLIAMENTARY CONDUCT

Gulab Singh Thakur

Introduction

The institution of Parliament is one of the greatest political inventions of modern times. It has been designed to ensure that the views of the people are reflected in the body which is bestowed with the duty and responsibility of governance of the country. In a vast, developing country like India, which has set for itself the goal of securing social and economic justice to the people, the policy makers and the legislators should, therefore, be educated and trained regarding the operational devices to be adopted in the parliamentary institutions. For effective discharge of their functions as representatives of the people, the knowledge of how Parliament and Legislatures go about their business is also required because certain parliamentary procedures have been evolved in the course of time which make the Executive accountable, responsive and responsible to the representative bodies. Such procedures not only regulate but also sustain the Government in one way or the other. Among the tools available to members to ensure parliamentary control over the Executive are Questions, Adjournment Motions, No-Confidence Motions, Calling Attention Notices, Half-an-Hour Discussions, Budget Discussions, Parliamentary Committees, etc. All these are effective instruments for securing redressal of administrative lapses and for discussing matters of urgent public importance. In the ultimate analysis, it is the legislators who are the guardians of the public interest. To put it in the words of Pt. Jawaharlal Nehru, 'There can be no higher responsibility or greater privilege than to be a member of Parliament.'

Responsibilities of Members

Over the years, the duties, functions and responsibilities of the members have increased enormously. But now, at times, healthy conventions, ethics, parliamentary etiquette and procedures are not being observed by the legislators. Once the Question Hour is over, at times there are noisy scenes resulting in pandemonium in the House. Sometimes the clashes between the Treasury Benches and the Opposition take place on trivial issues rather than on policy matters. On such occasions, even unparliamentary words are exchanged. In the past, the ruling party used to observe parliamentary norms and conventions more responsibly than the Opposition. But things have changed in recent years with the increase in the number of political parties represented in the House. Now, political parties of various hues come together to form Governments, even though there may not be any ideological similarities among them. There is a shift in the entire approach of the members of Parliament and State Legislatures. During discussions over important bills and policy matters, many a time, large-scale absenteeism is observed on both the sides. Earlier members used to spend hours in the library studying problems and preparing their speeches and then putting forth their views effectively in the House. Now, priorities seem to have changed, with more interest being shown by some members in sensationalisation of the issues, rather than on constructive discussions.

Imperative of Discipline and Decorum

Discipline and decorum in the Legislatures is, therefore, a major concern for all those who wish well for our parliamentary institutions. Several attempts have been made in the past to evolve a code of conduct for legislators. But the desired results are yet to be achieved. When we talk of 'discipline and decorum' the focus should not be limited to the conduct of legislators within the four walls of the House, but it should be seen in a wider context; rather it should be adopted as a way of life. Legislators are looked upon as role models by their constituents and hence their behaviour is keenly observed by the general masses. The disruption of proceedings in our Legislatures goes against the expected role of members which brings these 'temples of democracy' into public disrepute.

Now, the debates tend to become acrimonious on several occasions. Some members pay the least respect for parliamentary institutions and parliamentary ethos. It thus becomes difficult for the Presiding Officers to manage the slated legislative business. There are violations of rules and regulations by members often leading to unruly scenes in the House. Today, besides disturbances during President's/Governor's Address, the growing incidents of indiscipline, disorder, indecorous behaviour, stalling the proceedings on the floor of the House are matters of general concern. In spite of in-built devices in the *Rules of Procedure*, the Presiding Officers are finding it increasingly difficult to contain disorder inside the House. Sometimes, such incidents take place spontaneously while on other occasions these are the result of a planned strategy.

Measures to Maintain Discipline and Decorum

This is a serious problem and the Presiding Officers cannot resolve it all by themselves. It would require concerted and coordinated efforts from Presiding Officers and the leaders of all the parties, including the Opposition. An All India Conference on the theme was held in September, 1992 in New Delhi which called upon political parties to evolve a code of conduct for their members. A Resolution to uphold the dignity of the House was also passed by Parliament during the Special Session on the occasion of the Golden Jubilee of Independence in 1997. The issue was also discussed during the Presiding Officers' Conference in 1996 and during the June 2001 Conference at Chandigarh. The intention behind these endeavours has been to make the members, parties and their leaders see reason and behave more responsibly on the floor of the House. Ethics Committees have now been constituted in the Rajya Sabha, Lok Sabha, and in a few States, including Himachal Pradesh. The recommendations of these Committees can go a long way in improving the environment inside the House which has been a long-cherished dream of all well-meaning citizens.

Effective Time Management

The Presiding Officers have to face a great difficulty when it comes to time management in the House. At times, matters of urgent public importance are incredibly large in number and often of a serious nature. Members, naturally, clamour for projection of their problems on the floor of the House. The Presiding Officers have to resort to effective management of the listed business and transacting such business through consensus. The Business Advisory Committee is a device to build up consensus and hence it should be taken recourse to as frequently as needed.

Private Members' Business

The orderly conduct of business in the House would suffer from a serious inadequacy if private members' business, whether in the form of bills or resolutions, is not taken seriously. Private members' business should be provided considerable sanctity in a parliamentary democracy. It is, in fact, as important as Government business. The objective served through the mechanism of private members' business is obtaining an expression of the opinion of the Legislatures on matters of urgent public interest. The Treasury Benches should co-operate and extend special attention to private members' business.

Conclusion

The increasing disorder on the floor is not due to any lack of rules but for many extraneous reasons. As Pandit Jawaharlal Nehru said, tolerance is a basic tenet of democracy. Among other things, democracy demands self-discipline of a very high order. It also demands a high degree of democratic temper. The ability to work with others, especially with those with whom we differ on an ideological plane, is the best test of our democratic credentials.

Laudable resolutions by the highest legislative body/bodies of our country have already been passed. Comprehensive rules, practices and conventions to guide the functioning of representative institutions too are there. Even then, we continue to witness many unsavoury happenings in one Legislature or the other. Every Legislature frames its rules of procedure so as to ensure smooth transaction of business of the House. These rules clearly lay down the ways and means of raising issues and for the transaction of business. Though the freedom of protest is also a weapon in the hands of the members to put forth their view points and raise matters of urgent public importance in the House, this needs to be resorted to sparingly and with restraint and dignity. The increasing disruption of the proceedings, frequent suspension of the Question Hour, rushing to the well of the House, sometimes even threatening the Presiding Officers, etc. need to be stopped immediately. If every Legislature follows the *Rules of Procedure* and healthy parliamentary conventions sincerely and in letter and spirit, there will hardly be any problem or disruption of the proceedings of the House and the Legislatures will become the cherished model democratic institutions. For this, all of us will have to strive unitedly and in concert.

DISORDER IN THE HOUSE

Vakkom B. Purushothaman

Introduction

Disorder in our Legislative Chambers has been a matter of serious concern for all well wishers of parliamentary democracy. Does the House provide the legislators merely an opportunity to create disturbances and disorder? Really, if such behaviour exceeds the limits, will it not lead to popular hostility and indifference towards the democratic institutions, considering the fact that any matter relating to our democratic institutions hit the headlines and is contemporaneously transmitted to the electorate by the media? The increase in this disturbing trend in certain Legislatures and Parliament is a matter of serious concern. The post-Nehruvian decline in parliamentary standards has been commented upon that in contrast to the orderly conduct of our Parliament in Nehru's time, which was in fact the golden age of parliamentary democracy in India, the debates these days are drowned by shouts of the loud and the disorderly. That being so, the causes of disorder have to be explored and rectified.

Kerala Legislature : A Case Study

The violence that took place in the Gujarat Legislative Assembly in March 2001 was unprecedented. A repeat of what happened in Gujarat but with lesser intensity was enacted in the Kerala Legislature on 18 October 2001. The House witnessed uproarious scenes when the Speaker withheld consent to move an adjournment motion. The Opposition members trooped into the well of the House brazenly defying the Chair, shouted slogans against the Speaker and made the official reporters, including ladies, to leave their seats, snatched papers from them and tore them up. One of the members climbed on the table of the Secretary and yelled at the Speaker, and a few advanced towards the Minister who was replying to a Calling Attention Motion and attempted to assault him. A scuffle ensued between the Opposition and ruling coalition members, which was finally disengaged by the Watch and Ward. Later, the House suspended the three members who attempted to rough up the Minister for the rest of the Session. The Opposition disrupted the proceedings from the next day onwards by staging *dharna* in the well of the House, by holding placards and by raising slogans resulting in forced adjournments of the House. The matter could not be resolved despite discussions as the Opposition was disinclined to denounce the incident or express regrets.

On 30 October, the three suspended members started a hunger strike at the entrance to the Chamber. On 31 October, the Speaker adjourned the House up to 12 November. The matter was settled and the suspension was withdrawn on 12 November on the agreement that the Opposition would cooperate with the Chair in conducting the proceedings during the Question Hour and Zero Hour and in the House the Leader of the Opposition would characterise the incident as 'unfortunate'. The net result of the entire episode was not only the wastage of full 7 days and 33.5 hours of precious sitting time of the House, but also the deep decline in public esteem of the hallowed chamber of the representatives of the people of a State that takes pride in its literacy rate of 90.92 per cent.

An overview of the proceedings of the Kerala Legislature during the last twenty years shows that in all, the House held 1117 sittings. But on account of disruptions and disorder, 366.17 hours of sitting time was lost which accounted for 77 full days of sitting, including the days lost as the House had to adjourn on an earlier date on account of disturbances. On 83 occasions, members got the House adjourned by entering into the well of the House of which 49 times the disturbances were initiated by the members belonging to the Opposition. The inviolability of the Question Hour was infringed 8 times and the Question Hour had to be suspended due to noisy interruptions. Out of these 8 times, the Question Hour was suspended on 5 occasions in the present Session alone.

In the history of the Kerala Legislature, 24 members were suspended on 9 occasions, the first being in 1970 for conduct resulting in the disruption of proceedings. Two of these members were suspended twice.

Starting 1970, the Address by the Governor was disrupted on 22 occasions by raising of slogans, etc. In one instance, on 31 January 1974, an attempt was made to physically obstruct the Governor on his way to the dais.

The present (Eleventh) Kerala Legislative Assembly has 140 members, each member representing approximately 2.25 lakh people. The legislators in general are well educated. The Under-Matriculate category of legislators is only 3 per cent, *i.e.*, just 4 members in the present Assembly, whereas the same was 21 per cent in the Seventh Assembly and 18, 17 and 6 per cent in the Eighth, Ninth and Tenth Assemblies, respectively. 'Graduates and above' category constituted 60, 67, 47, 59 and 66 per cent, respectively.

It can be seen from the education background of members that the level of education has no connection with their indecorous behaviour in the House. Also, their unparliamentary conduct in the House does not affect their prospects in the elections as well. The unparliamentary conduct, derogatory to the dignity and decorum of the House, is only simulated as a short-cut to publicity as the media focuses on sensational news, irrespective of the cause and merits of a situation. It can also be seen that the propensity on the part of legislators to defy and denounce the rulings of the Chair and defile the sanctity of the House by upsetting the conventions and traditional values is on the increase. Members came into the well of the House 15 times during the Seventh Assembly, 11, 25 and 23 times during the tenure of the Eighth, Ninth and Tenth Assemblies respectively. The statistics of the present Assembly reveal that 9 members entered the well of the House and 3 were suspended.

Role of Legislature Parties

The present trend of holding the House to ransom by creating trouble is really a reflection on the party leaders who are disinclined to control their members and believe in entertaining the erroneous impression that defiance and noisy interruptions are the hallmarks of a vibrant democracy. They forget that it is through informed scrutiny rather than lung power that the Opposition can exercise influence on the Government. Governments fear criticism when criticism is informed and realistic. Then decisions that might otherwise go unnoticed have to be defended. Theatrics and fireworks inside the House deflect the attention of the people from the aberrations of the Government and in the process, the Opposition stands to lose.

Imperative of Adherence to Rules

Stricter consequences should entail misconduct inside the House to stem the above tendency. The suspended members were denied voting rights to statutory bodies in Kerala. Also, the Speaker who has to weather the turbulences in the House, should be strong willed and act as a custodian of the respect and reputation of the Legislature. A certain firmness and commitment to preserve what remains of parliamentary decorum in conducting the House is the imperative of the times. Unruly members should be dealt with firmly by the Speaker who has unbridled powers. Walter Bagehot has rightly observed: "A great Assembly is as soon spoiled by overindulgence as a little child"[1].

Agreement on fundamentals and respect for the rules of the game are indispensable pre-requisites for the proper functioning of the Legislature. Dissent should be dignified and expressed in forms that are legitimate.

Need for Procedural Reforms

We are in dire need of in-built parliamentary reforms to sustain the structure of democracy. Measures have to be devised to contain the deviant behaviour of members and to halt the downward drift in standards. The recent incorporation of rule 374A in the *Rules of Procedure and Conduct of Business in Lok Sabha* providing for automatic suspension of members who come to the well of the House and create disorder is a step in the right direction. On being named by the Speaker, the rule stipulates, that such member shall stand automatically suspended from the service of the House for five consecutive sittings or the remainder of the Session, whichever is less.

One of the causes for the unrest of the Opposition members is their marked insignificance in governance and law making. To a certain extent, the role of the Legislature is only to approve what the Government tells it to approve on account of the overlapping of the roles of the ruling party and the Executive. Law making is the only substantial function left to the Legislature as such. But the time devoted to law making is also getting lesser and lesser. The supremacy of the Legislature, it is said, is reduced to the constitutional equivalent of the Loch Ness monster, the existence of which is never established to the satisfaction of the outside world[2]. The Departmentally-Related Standing Committees have also not been able to live up to the expectations as serious alternative.

It is on account of the above that the House has served primarily as the forum for the ventilation of the grievances of the public. As a result, members play up to the media or concentrate on constituency problems and attempt to embarrass the Government by focusing on scandals rather than taking the legislative process seriously[3]. Of course, on the part of the ruling party, a belief in the primacy of the Legislature as the supreme representative organ and affording respectful consideration to the view points of the Opposition and a positive approach for making the Government accountable to the House would help towards the maintenance of the decorum in the Chamber.

Conclusion

It is pertinent to note that it was after decades and decades of evolution, that too, during periods of sustained growth and economic development, that the present democratic value systems got stabilized in the Western democracies[4]. The constrains that we are facing in our Legislatures today can only be treated as teething problems. It is in the

House that the credibility of the Government is sought to be questioned by the Opposition. The doors of the Chamber should reverberate with the protests of the deprived[5], but only in an orderly manner, and not by defiance of the Chair or the defilement of democratic values.

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[1] *The English Constitution* (21st Edn.) p.123

[2] Marr, Andrew, *Ruling Britannia* (1995)

[3] Philip, Norton (ed.), *Parliaments in Asia*, (1999), p.23

[4] Pinkney, Robert, *Democracy in the Third World*, Open University Press, p.169.

[5] Biffen, John, p.212

INDIAN LEGISLATURES—A VISION FOR THE NEW MILLENNIUM

Ajit Kumar Panja

Introduction

It is indeed essential that the Indian Legislatures adopt a vision for their functioning in the 21st century. This is essential for several reasons. The vision of the 20th century for the Indian Legislature had perhaps gone astray and suffered from inadequacies. The 20th century vision got blurred since the vision was mixed up with the programmes and schemes and the vision lost its bearing in the inhospitable climate of conflicting interests which did not necessarily reflect the aspirations and anxieties of the people.

Pre-eminence of a Vision

In any organization, for the justification of its rationale and for its efficient performance, a vision statement is a pre-requisite. This statement should spell out what the organization stands for and what it aims at. The vision should be visible and realizable and, therefore, it should be preceded by a clarity of thought. In chronological terms, then only come identification of functions, working out of steps, categorization of the functions into projects and programmes, prioritisation of targets, and the actualisation of the vision. Vision is a judicious combination of Emotional Quotient (EQ) with Intelligent Quotient (IQ); *i.e.*, EQ+IQ = Vision. In this process, 'vision' remains the life-line of the organization and should, therefore, work as the constant reference point.

20th Century Legislature and Lost Vision

The Indian Legislature of the 20th century seems to have lost vision as a reference point. Going by the definition of the Legislature, the vision of the Indian Legislature as an operating entity was aimed at reflecting and actualizing the aspirations and the basic needs of the people through a comprehensive legal framework. All this pre-supposes a strong political will on the part of all political parties to serve the people and that service has to be rendered in a determined and disciplined manner, and within a planned time-frame. While differences have a place in the democratic functioning, constant bickerings are an impediment to development. Doing service does not end in framing policies, endorsing programmes and framing laws; service is a much deeper and larger commitment to include the responsibility of the representatives of the people to ensure that things happen and people benefit. Political differences are acceptable, criticism is welcome, and differences in the method of implementation and in prioritisation are perfectly valid; but none of these should be allowed to stall the time-bound process of welfare and development. In the process of deviations from the path of commitment, vision becomes the first casualty.

Current Political Realities

What ought to be the 21st century vision of the Indian Legislature? And what should be the strategic method to remain committed to it for its realization? Before a statement on this score is made, it may be worthwhile to briefly recount the current political realities.

Power and Limelight Syndrome

In today's India—and this has been a dominant feature of the political spectrum during the last two decades—the driving force of political aspirants is to grab power or be an associate in the exercise of that power. Socio-economic disparities and imbalances (a past legacy and a continuing area of neglect) have over the years caused mushrooming of regional political parties with regional aspirations as the primary charter. Those who have seen the glitter of the political limelight cannot bear with the sidelined and 'out of focus' status. Since no single political party, while in power, has been able to deliver the goods on a consistent basis to gain credibility of the public at large, and the "limelight syndrome" within the party gradually gained upper hand, balkanization of political thought started as a dominant process.

At the root of this overall malaise lies three factors: (i) security of tenure of people's representatives without accountability; (ii) lack of legislative 'will' to ensure implementation of the policy framework and the legal framework; and (iii) a lack of abiding faith in the cause of nation-building.

All these negative factors are to be corrected and the adverse trends reversed; but this will obviously take time. What, therefore, could be done as the second best alternative is to accept the political realities and work towards good governance.

People's Representatives Demand Relevance

All political parties sending people's representatives to the Legislature expect to be recognized as relevant, irrespective of the size of their representation, for running the Government. It is also to be recognized that the elected party candidates represent the policies and the methods enunciated in the election manifesto of a political party and that a section of the people has reposed faith in those policies and methods. Such inputs should be respected and an honest attempt should be made to integrate them in the final Government policies and strategies. Incidentally, it will be interesting to make an analytical study of all the election manifestoes to get at another reality. All political parties approach the voters with more or less identifical promises in respect of education, health care, public health, shelter, industry, agriculture, environment, employment, poverty alleviation, uplift of the under-privileged and the marginalized sections of the society, etc. The difference lies mainly in emphasis, prioritization and methods. It is desirable that an exercise is undertaken to establish the commonality of the party manifestoes and segregate the differences. The Government's effort ought to be to resolve those differences to the maximum extent possible through all-party discussions. This is expected to bestow a certain degree of maturity on the political culture; such an exercise will also have a sobering effect on the decision-making process.

Politics of Politicking

Another reality is that so long as parties remain in Opposition outside Government, and parties in the ruling coalition suffer from a sense of marginalisation, it is extremely difficult for the ruling majority party to run the Government smoothly and in an effective manner. The "politics of politicking" takes over the political reins, and governance becomes the victim of delays, uncertainties, compromises, malfunctioning and perennial survival tensions. To eliminate all this, a cooperative approach to governance with official recognition of the contributions of all the partners may not be a bad idea, because the primary objective is to provide public welfare with nation-building as a necessary concomitant. The present Cabinet system is not adequate for this purpose, as the Cabinet may not have representatives of all coalition partners and the Cabinet Notes may not include inputs from all parties. Even the Opposition parties can be encouraged and made to feel welcome to provide 'inputs' for governance which should be duly recognized officially. Such a strategy could itself work as a new method of political education. The acute side of this reality is that today's majority party in Opposition may be tomorrow's ruling party either singly or in coalition with other parties, but there is no guarantee that it will be able to work smoothly and effectively; as a consequence, the governance of public welfare and nation-building will be in a state of perpetual flux and administration will drift to deteriorate. Since absolute majority is hardly a possibility now in view of the socio-economic trends and the political psyche referred to above, the best course seems to be a genuinely cooperative approach to deliver the goods. Absolute majority, like absolute power, also corrupts absolutely, and in the absence of checks and balances in the mould of a 'performing political will', the administration in its attitudes and practices becomes immune to performance and public welfare.

Lack of Accountability

Yet another reality is that despite the existence of an elaborate review mechanism through House Committees and Parliament/Legislature Questions, things do not happen significantly and only a fraction of the needs and expectations materialize. The voice of the people gets surrendered to bureaucratic machinations. This is primarily because the legislative system does not operate on the principles of accountability (punishment is in-built in accountability) and, as a result, the administrative apparatus gets infected with lethargy, procedural rigmarole, excuses and corrupt practices. The whole climate of administration gets eroded and "bureaucracy" rules the roost. Everybody plays to the gallery with no goals scored!

Judiciary taking over Administration

The sum total of this widespread decay is that the Judiciary has stepped in to virtually take over from the Legislature and the Executive the task of governance on vital issues of State policy and implementation approach. Fortunately for the aggrieved people and unfortunately for the Legislature and the Executive, people have started reposing greater faith in the Judiciary for course correction and timely justice, and the Judiciary's intervention carries immense conviction with the people. You want Government to perform and so look up to the Judiciary! As a stopgap arrangement, Public Interest Litigation (PIL) may be acceptable, but the structural framework enshrined in the Constitution demands alignment of functions in its original form and spirit. Otherwise, democracy will be redundant and, republic a misnomer.

Vision for 21st Century Legislature

Having said this, in my view there is still a valid case for the supremacy of the people's representatives in the running of the

Government. A reorientation of the current political thought process and a structural change in the business of governance are the needs of the hour. My vision of the 21st century Legislature is a "welfare motivated, performing institution with three functional components." All the three components deserve cognition simultaneously and for effectiveness do not admit of any fragmented or phased approach.

Component-I: **All-Party Inputs for Governance**

Government may not be an all-party entity but governance should be a cooperative and participative endeavour of all political parties, including those in Opposition, who *have sent people's representative(s) to the Legislature.* A broad outline of the mechanism to achieve this and how to go about in the preparation of the infrastructure of credibility have been stated in the earlier paragraphs. Fragmentation of the existing political parties just for the sake of gaining limelight by certain individuals should be firmly discouraged through legal provisions. Parties within the Government should have 'positions of relevance' both in terms of the importance of the functions and the unique features, if any, or the emphasis in their election manifestoes. But this will be with a caveat of *performance* with capital 'P'. Monitoring performance as a continuing exercise should rest with the Prime Minister and any follow-up action should have the virtue of transparency. Inputs of the Opposition parties incorporated in the Government policies and implementation strategies (legal framework is one of them) should be recognized and publicized officially.

Component-II: **Performance without Judicial Intervention**

The Legislature, lest it should get discredited, must get back to its original and constitutionally designated role of governance through legal framework and implementation of directions. Judicial pronouncements carry an element of fear for non-performers and violators. Contempt of court can invite public reprimand and prosecution. The Legislature also possesses such powers of effectiveness and where it is lacking, appropriate legislation should provide it. Where necessary, the House Committees should be empowered to demand implementation within a given time-frame with power to punish for contempt of the House in case of violation. Such empowered demands have to be monitored at frequent intervals to keep performance on the leash. Legislature should have more of eyes, and penetrating eyes! Initiative and drive must stay with the Legislature and this has to be accepted as a bounden duty under the Constitution.

Component-III: All Embracing Accountability

Accountability has to be made a dominant feature of governance through suitable legal framework and such accountability laws should cover all wings of Government, including the Legislature. The goals are public welfare, nation-building and national growth and development. The laws should say that all Government functionaries in all wings of the Government are accountable for their respective performance and are liable to punishment for non-performance. The system should be so framed that the scope for excuses is minimal. Situations like a Ministry operating without a formally declared policy for months and years should not be allowed; not more than six months be allowed to frame the Ministry's public policy and on failure the Budget provision to run the Ministry should automatically be frozen. The proverbial "March Rush" and underutilization of Budget allocation are wasteful features suffered for too long and such failures need to be punished. For this, the Budget can fix utilization time targets in phases within the year, and budgetary review and course correction should be made "accountable" functions. Once a House Committee makes a recommendation, it has to see through its fructification. Assurances to the Legislature by the Executive have to be fulfilled within the agreed time. If stricter laws are to be framed, that should be the Legislature's responsibility. Such examples can be multiplied several times.

Conclusion

Attitudinal and structural changes in the 21st century Legislature is a highly critical issue and has a direct bearing on Indian democracy. Democracy has been viewed by a political philosopher as "a drunken idiot surrounded by a yelling mob". We do not want Indian democracy to be of that genre! And the Indian Legislature of the 21st century has to redeem the hope the people reposed in it and the founding fathers envisioned for it.

NEEDED—A NEW VISION

Dhirubhai Shah

Introduction

Different political scientists have propounded different systems for governance from time to time. But democracy has established its supremacy over all other forms of governance and made itself acceptable as the most preferred system of governance across the globe with certain universally accepted basic norms. It has certain intrinsic virtues over other forms of governance where the basic human rights, the Rule of Law, equal opportunity and equal treatment to citizens in all respects, free and fair elections, etc., are seen as the fundamental principles underlying good governance. This is also evident from the fact that countries which were till a few years ago following other systems of governance are now switched over to a system of democracy and today, the wave of democratisation is sweeping across the globe.

In any democratic country, people have a right to change the Government according to their wishes in a peaceful manner. Only a democratic Government can provide the maximum opportunity for the exercise of such a right. Parliament and State Legislatures, being the paramount institutions of democracy, provide opportunity to the citizens for exercising the right of self-determination through their elected representatives. In any representative democracy, the Legislature has to play a crucial role in fulfilling the basic objects of democracy. A Legislature, being the instrument of social change and development, has to perform manifold functions, keeping in view the ultimate hopes and aspirations of the people. In a democracy, the Legislature has to ensure the following basic objects of running the system:

- The form of Government should be supported by general consent.
- The representatives chosen by the electorate should make the laws.
- The governing head of the State should be elected either directly or indirectly by popular vote and should be responsible and accountable to the Legislature.

- Right to vote to be conferred on the adult population.
- Elections should be held periodically in a free and fair manner.
- Opportunity to serve in Government should be open to all citizens, irrespective of caste, creed, religion, gender, etc.
- People should be assured enjoyment of Fundamental Rights and liberties.
- The power of Government should be limited to the fundamental laws of the land.
- Rule of Law should always prevail, and the independence of the Judiciary should be ensured.
- Freedom of expression and respect for other's points of view should be guaranteed.
- Minority rights should be safe-guarded.
- There should not exist any glaring inequalities in the society.
- There should be a strong and responsible Opposition.
- Equality in law and equal protection of law to all citizens.
- Observance of constitutional and public morality.
- There should be a free and fair media.
- There should be transparency and openness in decision-making.
- There should be easy access to information for the citizens.
- No tyranny of the majority over the minority.
- The system of governance should be based on responsibility, accountability and transparency.

Legislative Control over Administration

In recent years, the people do not look upon democracy as a form of Government but more as a way of governance and as a way of life. Today, the people are heavily dependent on the Government in their day-to-day activities. They look upon the Government as a source of divine power for meeting their day-to-day common needs. They seek the assistance of the Government in almost all walks of life. This has led to the phenomenal growth in the governmental activities in practically every sphere. In the changed circumstances, the Government has to broadbase its area of operation. As a result, there is a fast growth of bureaucratic administration. With the change of outlook on the concept of democracy, the Legislature has to react sharply to the changing needs of society. Its traditional role of legislation and ensuring accountability of the Government by sanctioning financial proposals of the Government will no longer hold good in the context of the present scenario. With the proliferation of the governmental activities, the Legislature has assumed added responsibility and its workload has increased so much that it is impossible for any Legislature to exercise full control over the administration. Its traditional methods of scrutiny of Government actions have become symbolic in nature and as a result, it is losing its control over the administration. This is an area where the Legislature has to strengthen its functioning by refining its existing procedures and evolving certain new procedures for effective control on Government action or inaction.

Functioning of Legislatures

A close look at the performance of the Legislatures over the last five decades reveals that they have functioned reasonably well in our country. There may not be in their composition true microcosms or mathematically exact form of representation. Nevertheless, the Legislatures represent nearly all organised shades of public opinion and as such, they do reflect the aspirations of the common people and seek to ensure that the Government in its widest sense remains responsive and accountable. In the five decades since Independence, our country has made notable progress in many fields, especially in agriculture and industry, in the development of natural resources and infrastructural facilities, in the sphere of education, science and technology, etc. However, many challenging tasks still remain to be accomplished due to certain inherent infrastructural constraints. For the establishment of a democratic, egalitarian social order based on the principles of justice, liberty and equality, the role of the Legislature still remains a challenging one in the 21st century.

There are certain areas where the Legislature has to pay a greater attention for its effective functioning. One such area in which the Legislature has to respond immediately is the area of legislation in the field of elections and political participation. We all know that the process of election is the cornerstone of any meaningful democracy. Election involves the people in the political life of the nation and also public affairs through participation and mobilisation. It is the process through which the political opinion of the people is moulded and promoted. Besides, elections bring about peaceful and orderly change of Government. In the 21st century, the Legislature should ensure the fairness and impartiality of the electoral process by suitably amending the existing laws. Ultimately, the success of any democracy lies in free and fair elections based on the Rule of Law. If elections are distorted, democracy gets eroded. India has so far witnessed Thirteen General Elections to the Parliament and many elections to the State Legislatures. Overall, there has been peaceful democratic change of Government through the process of election. To that extent, the process of election has been successful during the 50 years of our democracy. The people of India have shown a great deal of maturity and the system survives despite the existence of casteism and regionalism.

Changing Electoral Process

With the degradation in moral values and morality in public life during the last three decades, electoral processes have been polluted considerably by the role of money, muscle and mafia power. To overcome this situation, the Legislature should enact either a comprehensive legislation or make suitable amendments in the existing legislations. For ensuring greater political stability, the Parliament has to amend the existing law on defections. During the last decade, political instability has caused a number of problems in the way of the successful working of our democracy. The politics of defection for access to power is the main reason behind that political instability. To curb the menace of defection, the Anti-Defection Law was passed in 1985 and after its working over a period of fifteen years, it has been noticed that the evil of defection is still prevalent. In the administration of the law, several lacunae have been brought to notice. The Parliament has to respond to the changing needs by amending the law in the new millennium. Criminalisation of politics is the burning problem of the day and the Legislature in the 21st century should curb this menace also by suitable amendments in the election laws. The new millennium should create a healthy atmosphere so that more and more men of calibre and vision could be brought into politics and thereby their services could be utilised for running the country efficiently.

Legislature and People's Grievances

In the new millennium, the redressal of peoples' grievances should be the sole aim of any democratic Legislature. With the vast growth of administration and increasing involvement of the Government in the day-to-day affairs of citizens, the element of accountability becomes more and more complex. Today, corruption has seeped into almost all spheres of Government activities. Perceptive scholars have recognised that the greatest threat to democracy no longer comes from opposite ideologies, but from corrupt practices. Corrupt practices have a wide meaning than the word 'corruption' as it includes everything unethical. There is a greater demand for transparency and openness in public administration. On account of widespread corruption, the plans/schemes made for the welfare of the people have turned out to be a total failure. The need of the hour is to make the administration transparent so that the people will be in a position to know how the system performs and how public money is expended. The existing laws against corruption should be strengthened by the Legislature for achieving greater transparency among the public functionaries. For redressing the grievances of the public, the system of Ombudsman should be strengthened in such a way that almost all activities of public functionaries could be brought under its purview. The concept of citizen's charter should also be broad-based so as to cover all the services which are left out from its ambit.

Strengthening Right to Information

In the new millennium, the Legislature should ensure that public policy is promoted in the direction of common public interest. The citizen's right to information should be strengthened. Information technology should serve as a tool for the Government for easy access to the people, thereby enhancing transparency in administration.

Ensuring Healthy Relationship between the Ruling and the Opposition Parties

In the new millennium, the Legislature should ensure a healthy relationship between the Ruling and the Opposition parties. The Opposition has a responsibility to the country and the people will judge them by the manner in which they discharge their responsibilities. Pandit Nehru once said: "I believe completely in any Government having stout critics and having Opposition to face, because without criticism people become complacent and the Government become complacent. The whole parliamentary system is based on criticism." Dr. S. Radhakrishnan, another great statesman, also expressed similar opinion while whole heartedly supporting minority opinion in a democracy. He said: "Democracy is likely to degenerate into tyranny if it does not allow the Opposition groups to criticise freely, fairly and factually the policies of the Government". The Legislature has to establish some new healthy traditions for maintaining this spirit of cooperation as envisioned by our founding fathers.

Conclusion

The gigantic task of economic development and social transformation of the country cannot be left to the Government and administration alone. The Legislature has to play a vital role in involving every section of society in this regard. It has to play a leadership role in social transformation and economic development of the country. Today, democracy is deep-rooted in our country as is evident from the successful working of our Legislatures since Independence. In the initial years of our Independence, the Legislatures had devoted most of their time for transacting legislative business. Many social legislations curbing social evils like dowry, untouchability, bonded and forced labour, etc. were passed by the Parliament during the early years. Legislations implementing land reforms for eradicating social and economic inequalities in the society were also passed. The Parliament had directed the Government of the day to adopt economic policies towards the ultimate goal of eradication of poverty and balanced economic growth. Therefore, the Government had to adopt a series of poverty alleviation programmes as well as employment generation schemes. During the last two decades, rapid industrialisation and technological advancement have posed new challenges before our Legislatures. All-round globalisation during the last decade of the 20th century has forced our economy to undergo sweeping changes. Information revolution has opened up new vistas of development. In the 21st century, there will be more and more scientific advancement and easy access to communication through the Internet. All these developments have forced our Legislatures to respond swiftly and promptly to the changing needs of our society. Today, the Legislature devotes most of its time in grievance redressal by adopting new procedural devices. Its role has become more and more representative and it has broad-based its existing procedural devices with a view to ensuring accountability and transparency in the administration. There is no doubt that our Legislatures have successfully faced the challenges over the years and are striving to become more and more responsive to the needs of the new century.

OUR LEGISLATIVE BODIES—A VISION FOR THE NEW CENTURY

Charnjit Singh Atwal

Introduction

Parliamentary democracy, in its modern sense, has been at work in India since Independence after the adoption of a Republican Constitution in 1950. Over the past five decades, it has struck deep roots in the Indian soil. As the supreme representative bodies, the Parliament and the State Legislatures have evolved into sovereign people's institutions par excellence ever adapting to the changing needs of time. Parliamentary democracy has withstood various trials and tribulations as well as manifold stresses and strains. Our countrymen have, through the electoral process, time and again reposed their trust and confidence in the parliamentary system.

Today, our parliamentary polity is 55 years old. When we look back, we find scores of achievements to feel proud of. However, we need to take note of some of the failures as well. Overall, we find the balance in favour of our successes and the credit for this success goes to our parliamentary democracy.

Till now, we have been able to successfully maintain and preserve the representative character of our democracy and the regular conduct of thirteen General Elections and people's active participation in the electoral process have abundantly demonstrated their strong faith and trust in the system despite many aberrations which have crept in. If we want that our Legislatures should meet the requirements of the 21st century, we have to ensure that the aberrations are removed and the functioning of these democratic institutions is improved.

Challenges since Independence

Since Independence, India has faced many challenges, both internal and external, but our country has made phenomenal progress in various spheres. Before Independence, the country suffered chronic food shortage, and devastating famine affected the people year after year. Now, the situation has changed greatly. The abolition of intermediaries and the implementation of land reform measures, expansion of irrigation facilities and progress in the field of power generation and other related measures have increased food production many times. Now, our country is self-dependent as far as the food sector is concerned. As a matter of fact, we are in a position to export food items to other countries. Both general and technical education have greatly expanded and we have one of the largest pools of scientific and technical manpower in the world. All this has been made possible because of our political system, which has worked well. This political system has been able to hold together our vast country despite its great diversity and heterogeneous character. It has thus been proved beyond any doubt that parliamentary system has the potential to keep the Indian Legislatures alive and fully awakened to meet any eventuality.

Meeting the Aspirations of the People

Indian Parliament and the State Legislatures have always tried their best and sincerely endeavoured to live up to the aspirations of the people of our country. The passing of eighty-five Constitutional Amendments abundantly prove a point that our Legislatures are definitely keeping pace with the time and such steps and measures as envisioned through the amendments, are absolutely essential for a progressive and dynamic society. The enactment of the Anti-Defection Law, reducing the voting age from 21 years to 18 years, providing the status of a Cabinet Minister to the Leader of the Opposition, passing of the Constitutional Amendments making provision for the clearance of the backlog of vacancies in promotions in Government jobs to the Scheduled Castes and Scheduled Tribes, etc. testify to the fact that the State Legislatures and Indian Parliament have acted in consonance with the expectations and will of the people. I would salute the wisdom, the enlightened national outlook, and the far-sightedness of the founding fathers of the Indian Constitution who, after meaningful discussions, prepared the supreme document and equipped it with adaptability and flexibility to face any situation. Even today, our Constitution and Legislatures have the required rhythm and rare quality of facing the challenges of the 21st century successfully. The setting up of the Constitutional Review Commission by the present Union Government leaves nobody in doubt that our Government is committed to enabling the Indian Constitution and the Legislatures to meet the challenges of the changing times.

A vision for the Indian Legislatures should necessarily include parliamentary culture, accountability of the Legislatures to the people, time management in the House, electoral reforms, use of information technology and enactment of good and people oriented legislation. Sincere introspection on the part of our legislators will go a long way in determining whether this country and the Indian Legislatures need a new vision in this new century or not.

Improving the Functioning of the Legislatures

It is accepted that all is not well in our Legislatures and there is still ample room for making the functioning of the Legislatures more effective, efficient and purposeful to meet the requirements and challenges of the time. A heavy responsibility lies with the legislators and the parliamentarians. One cannot think of a strong and effective Legislature without effective legislators. It is the need of the hour that legislators should discharge their duties with dedication, determination and devotion.

Ensuring Smooth Functioning of Parliament and State Legislatures

After Independence, our countrymen looked up to our legislators and Legislatures with admiration and great pride. Members took their legislative business very seriously and maintained the dignity of the House by their decorous and exemplary behaviour inside and outside the House. In spite of different ideologies and differing perceptions on diverse issues, they worked unitedly for the progress and development of the country with a missionary zeal. It is a matter of great regret that these days, it is often seen that members do not take their work seriously and waste the time of the House on trivial issues. Not only the standard of debates has gone down, even mutual respect among members is lacking. Even the President in Parliament and Governors in State Legislatures are not allowed to discharge their constitutional responsibilities without interruptions. It is high time that members ensured the unobstructed, uninterrupted and smooth functioning of Parliament and the Legislatures and obeyed the rules, procedures and conventions of the House. Political parties can play an important role and help the Legislatures face any eventuality if highly educated and honest candidates with deep commitment to social uplift of the poor and the welfare of the country are selected and fielded in elections. People should also show their maturity and wisdom by electing seasoned, honest and experienced candidates while exercising their franchise. It is possible only when the people themselves transcend narrow partisan interests.

Need for Educated Legislators

The Legislature's primary function is to enact laws and the laws should always be for the betterment of the people and for the progress and development of the country. An educated person can understand the political and social conditions before the nation in a better way. He can delve deep into the complexities of the issues and problems faced by the State and the Legislatures and can contribute effectively in the deliberations and discussions and in framing laws and policies of the State. Good educational qualifications, understanding of the political conditions prevalent in the country and to some extent a degree of expertise in different subjects, including in the latest information technology, are vitally important because without these, no legislator will be able to perform his functions efficiently in this modern era. In this age of information technology, one can receive any information from any corner of the world through internet, etc. The latest advances in information technology have converted the present world into a very 'small' world. Every trade, profession, business or service practically needs professional brushing up after regular intervals. Nowadays, the job of a legislator has become a whole time profession and requires basic minimum knowledge and skills in various fields. He has not only to work inside the House but also in his constituency. To fulfil his duties and responsibilities, a legislator ought to be equipped with the modern systems of information and communication. Indian Legislatures have big Budgets and are supported by the Governments. If Legislatures provide their legislators with the requisite training by holding regular refresher courses, the Legislatures would become lively and strong and thwart any attempt to undermine their authority.

Imperative of Computerisation of Services

To keep pace with the changing times, our Parliament has taken some steps which are really praiseworthy. These include: the computerization of the information services to the members of Parliament, satellite linkage and televising of parliamentary proceedings. It will be really helpful if the State Legislatures too provide such facilities. Also, they should be provided with modern information technological devices such as computers, internet, satellite linkage, etc.

Free and Fair Elections

Elections are the cornerstone of the parliamentary system and its success depends upon free and fair elections held periodically. It is true that since 1952, power has changed hands on thirteen occasions peacefully in comparison with several other countries. However, it is an unpleasant fact that riots, booth-capturing, rigging of elections, intimidation of voters, inciting caste and communal passions, money and muscle power have come to vitiate the electoral process. Such tendencies pose a serious threat to the very existence of the Indian polity. No doubt the Election Commission of India is doing its best to curb these malpractices which have brought our electoral system into disrepute. It is a matter of some satisfaction that the Office of Chief Election Commission of India has been armed with powers to initiate and recommend disciplinary action against errant officials who are on duty during the elections. Electronic Voting Machines have also been introduced in a phased manner to eliminate bogus voting. Such steps will definitely help to conduct free, fair and impartial elections which will further provide the much-needed help to our Legislatures and enable them to surmount the hurdles and obstacles which come in their way. Introduction of photo identity cards for voters during elections has also proved to be an effective deterrent against large-scale impersonation and bogus voting.

Evil of Defections

Defections from one party to another by members for vested, narrow and short-term gains have really caused irreparable damage to the parliamentary system. The Anti-Defection Law has miserably failed to contain defections, rather, it has encouraged large scale defections. Unless these defections are checked, our Legislatures cannot face the challenges of the 21st century. So to cleanse the political system, defections should be stopped by appropriate measures.

Checking Corruption and Criminalisation of Politics

It is also high time that all political parties evolved a consensus on how to check the evils of corruption and criminalisation of the electoral process. If the criminals and anti-social elements find a foothold in the electoral process it will erode people's confidence rapidly in free and fair elections. The growing menace of money and muscle power pose the greatest challenge to our democracy. Elections are becoming so costly that ordinary people who have a fine record of public service find it difficult even to dream of contesting elections. Even established political parties are finding it hard to garner adequate resources. This escalation in the expenditure associated with elections increases the dependence of both candidates and parties on moneybags, which has a negative impact on our parliamentary system and polity. There are various ways of cutting down the soaring expenses. For example, advertising agencies can be kept out and air travel should be reasonably restricted during elections. Greater use of the electronic media is another option to cut the escalating costs of elections.

Conclusion

If we want that the Indian Legislatures should enter the 21st century on a positive note and that the Legislatures should be able to match the requirements and needs of the current century, then, we all should contribute in this noble task honestly and sincerely. Some of my suggestions are: (i) Minimum educational qualifications should be fixed for legislators, parliamentarians and other representatives of the people; (ii) a law should be framed providing that when a member quits his parent party, he should cease to be a member of the Legislative Assembly and all the benefits, allowances, perks and other facilities should be immediately withdrawn from him; (iii) to keep pace with the time, Legislatures and legislators should be provided with the latest electronic facilities and equipment; (iv) electoral reforms as suggested by the Chief Election Commissioner of India from time to time should be accepted and given legal shape; and (v) political parties should refrain from fielding candidates with criminal background. All in all, a heavy responsibility lies with the legislators to feel the pulse of the time and strive honestly and sincerely to realize the vision that we have set for ourselves in the new millennium.

INDIAN LEGISLATURES IN THE 21ST CENTURY*

Sadanand Singh

Introduction

India is the world's largest democracy. In the world, there are as many forms of democratic systems as the number of countries claiming to be having the democratic system of governance. However, the pattern and form of democratic system adopted in a country depend on the social and cultural ethos, local conditions and political culture of that country. In the Asian continent, India is one among the very few countries which has continued with the same form of democracy which she had adopted at the time of Independence.

Now, after five decades, a need is being felt for the evaluation of the present political system and the way it is functioning. The Parliament consists of the people's elected representatives. It enacts laws, takes decisions with regard to important subjects and also keeps a watch on the activities of the Government. The Government which is formed on the basis of its majority in Parliament or State Legislatures is accountable to the Legislative Body. In fact, democracy creates a sense of tolerance and understanding in public life. It also inspires us to show respect to the sentiments and views of others.

During a debate in the Lok Sabha on 28 March 1957, Pandit Jawaharlal Nehru made the following observations about parliamentary democracy:

> We choose this system of parliamentary democracy deliberately: we choose it not only because, to some extent, we had always thought on those lines previously, but because we thought it was in keeping with our own old traditions also; naturally, the old traditions, not as they were, but adjusted to the new conditions and new surroundings......Parliamentary democracy involves naturally peaceful methods of action, peaceful acceptance of decisions taken and attempts to change them through peaceful ways again; it is not parliamentary democracy otherwise. It is essential that we, who talk and who believe in the quest of peace so much, should remember that the quest of peace and the quest of democracy can be made through methods of peace and not through any other.

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*This is a translated version of the original article received in Hindi.

Challenges before the Legislature

In view of the kind of changes that have taken place in the political scenario, it has become a challenge for the Legislature to ensure the accountability of the Government. These days, the election results are sometimes startling and all the equations for forming the Government are rendered useless. Members of the Legislature have to make a lot of efforts to form a stable Government.

For a long time now, the common man as well as the people at various levels have been saying that the political parties in our country field such persons as their candidates who are capable of winning the elections by hook or by crook. The entry of honest and dedicated persons in politics has been hampered due to casteism and nepotism.

Coalition Governments

A trend is clearly visible in our multi-party system that regional parties are coming up at the cost of national parties. Minority Governments are being formed. Generally, there is only a thin margin that determines the majority and the minority. The Government has to face the vote of confidence virtually every other day and as a result, it has become essential to opt for coalitions. We have entered the era of Coalition Governments. The Legislature is compelled to work with a Coalition Government. There are several dimensions to this problem, *i.e.*, weakening of the prominent political parties, erosion of confidence of people in political leaders, indifference towards elections, a fall in the average percentage of voting, emergence of regional parties and leaders, increasing influence of regional leaders at the national level and the like.

So, the Indian Legislature has a major role in forming and running the Government. That being so, there is a compulsion to run the Government setting aside the ideological differences. Comparatively smaller constituent groups always put pressure on the Coalition Government. The Coalition Governments are formed on the basis of a common minimum programme and there is also a compulsion to avoid elections as far as possible. The Indian Legislature has proved now that political stability is possible despite hung Legislatures.

Widening Role of Legislatures

We are entrusted with the responsibility of making our democratic system highly developed. The functions and the duties of the Legislatures have become more extensive in the current scenario. We discharge all the functions and duties of a Welfare State. The Legislatures have to function keeping in view the economic, social, cultural and political development of the people. The interests of the people and the development of the State and the country are looked after by the Legislatures. Members of Parliament and Legislatures have to equip themselves with the latest techniques and work for the welfare of the people. Nowadays, with the improved means of communication, all the Legislatures have come closer and get instant information about one another's activities. Our responsibilities and duties have increased all the more in the new millennium.

Indian Legislatures are facing major challenges in the 21st century. These include: providing employment to those rendered jobless due to mechanisation and privatisation and checking the increase in unemployment and population explosion. On the other hand, terrorism has emerged in a terrifying form in this century. It has become an international problem. Today, many developed and developing countries are threatened by it. Innocent people are being killed without any rhyme or reason. There is a need to root out the evil of terrorism.

Industrious, honest and principled leadership has to be protected and the corrupt and the sycophants have to be removed, including from the bureaucracy. Adopting a fresh approach to Centre-State relations, we must lay emphasis on a strong Centre as well as strong States. Indian Legislatures should introspect on their inadequacies and endeavour to train our legislators to discharge their parliamentary responsibilities more efficiently. We should also avoid going in for further legislations and make efforts for speedy implementation of the existing laws. The proposed step for providing reservation for women in the Lok Sabha and the State Legislative Assemblies will have to be given a final shape.

Conclusion

If democracy is to be strengthened, the democratic institutions will have to be given their due place and respect. Pandit Nehru once said that there are several pre-requisites for the successful functioning of parliamentary democracy, such as capability, dedication towards work, increased mutual co-operation, self-discipline and self restraint. Legislators and the political leadership would do well to heed Pandit Nehru's advice to make our parliamentary democracy more stronger and vibrant. Thus, India, the world's largest democracy, is now facing a crucial test in the 21st century. Understanding the true meaning of democracy through the multi-party system, reconciling conflicting ideologies among political parties for national welfare and preserving the ideals enshrined in our Constitution are the major challenges of the day because it is not only our commitment but also our destiny to follow the path of democracy.

[illegible] to follow the path of democracy, [illegible] techniques and work for the welfare of the people. Nowadays, with the improved means of communication, all the Legislatures have come closer and get instant information about one another's activities. Our responsibilities and duties have increased all the more in the new millennium.

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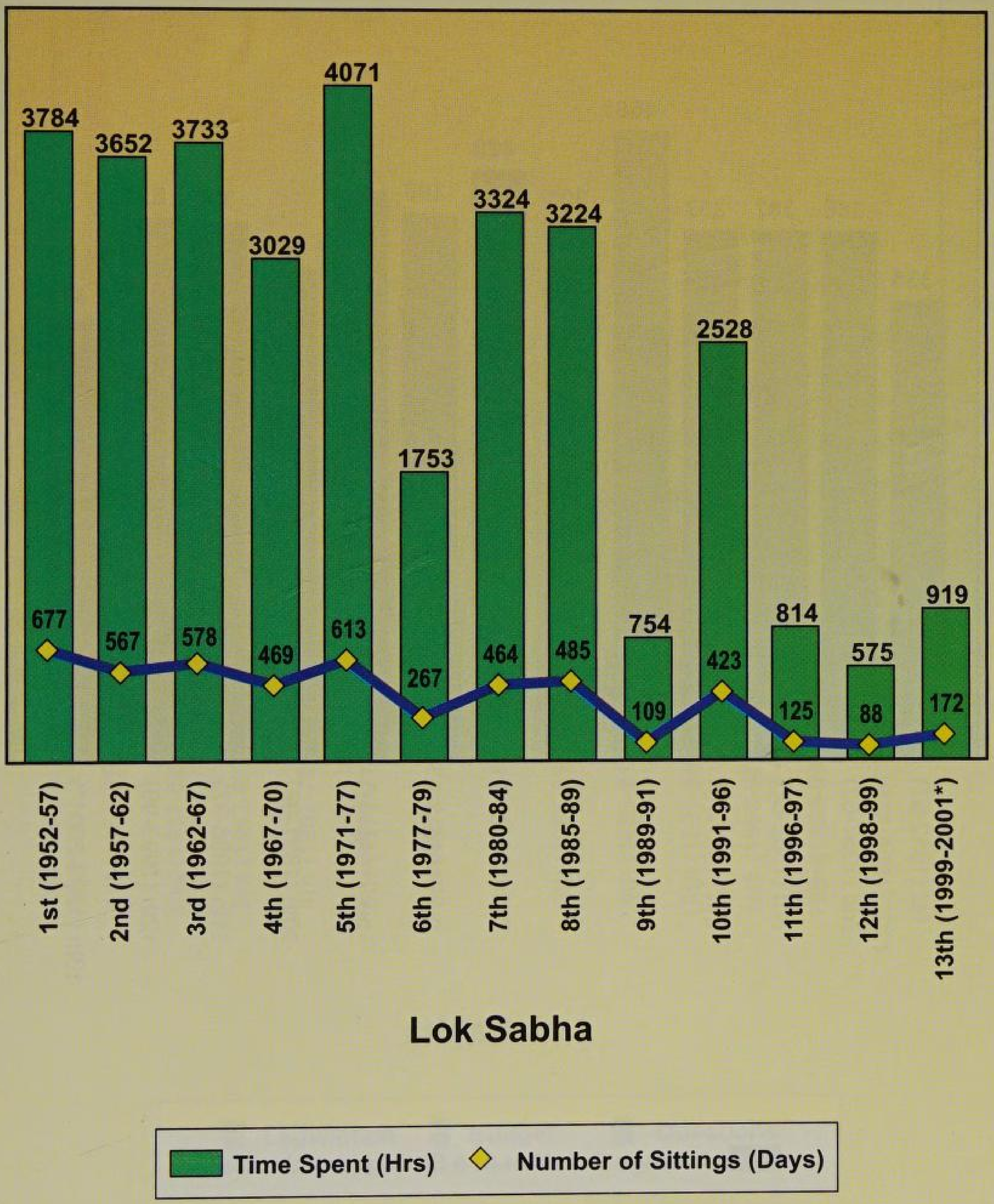
LOK SABHA—A STATISTICAL PROFILE

SITTINGS HELD AND TIME SPENT

(First to Thirteenth Lok Sabha)

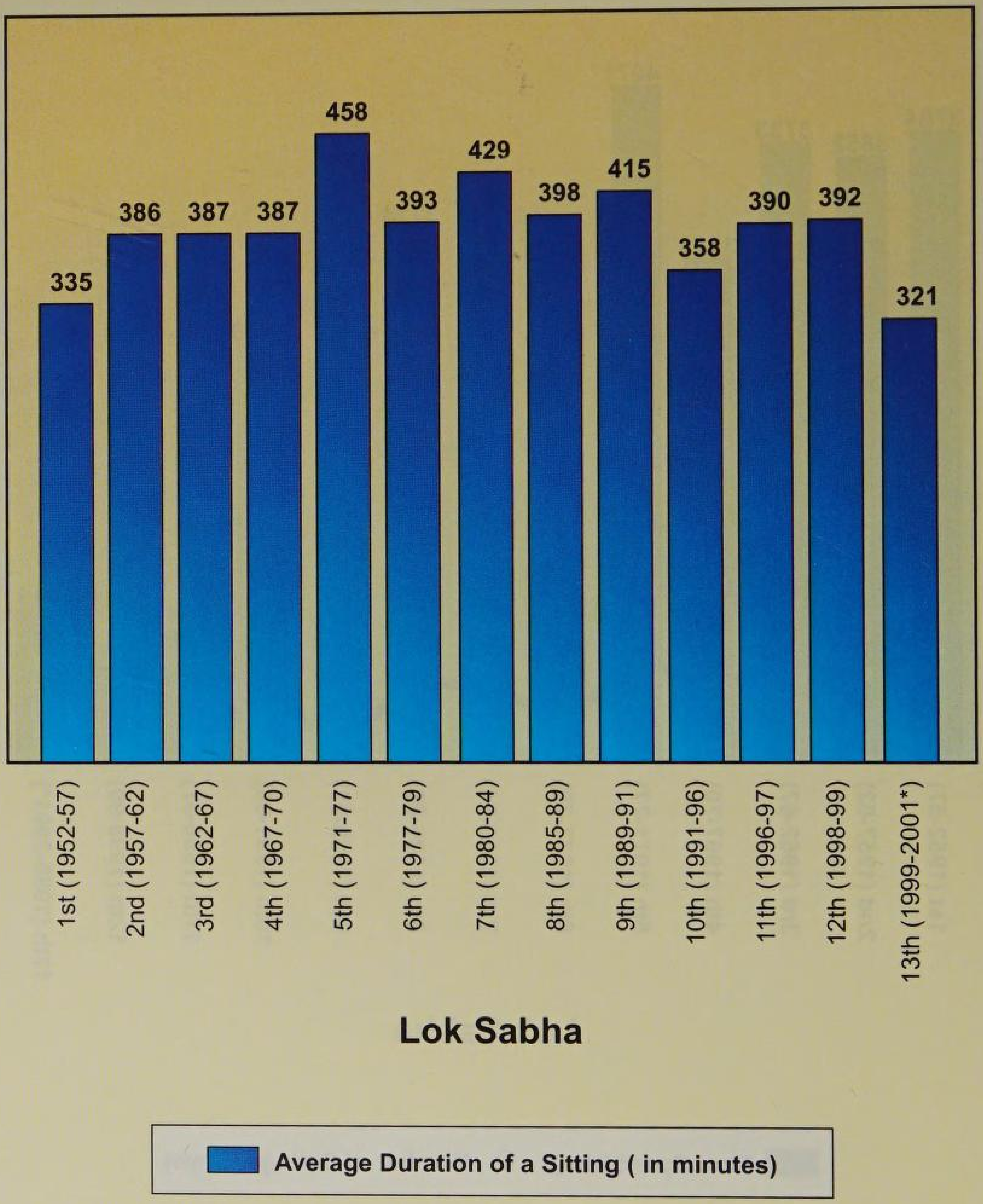


* Upto Seventh Session

Graphics by Computer Centre, LSS

AVERAGE DURATION OF A SITTING

(First to Thirteenth Lok Sabha)



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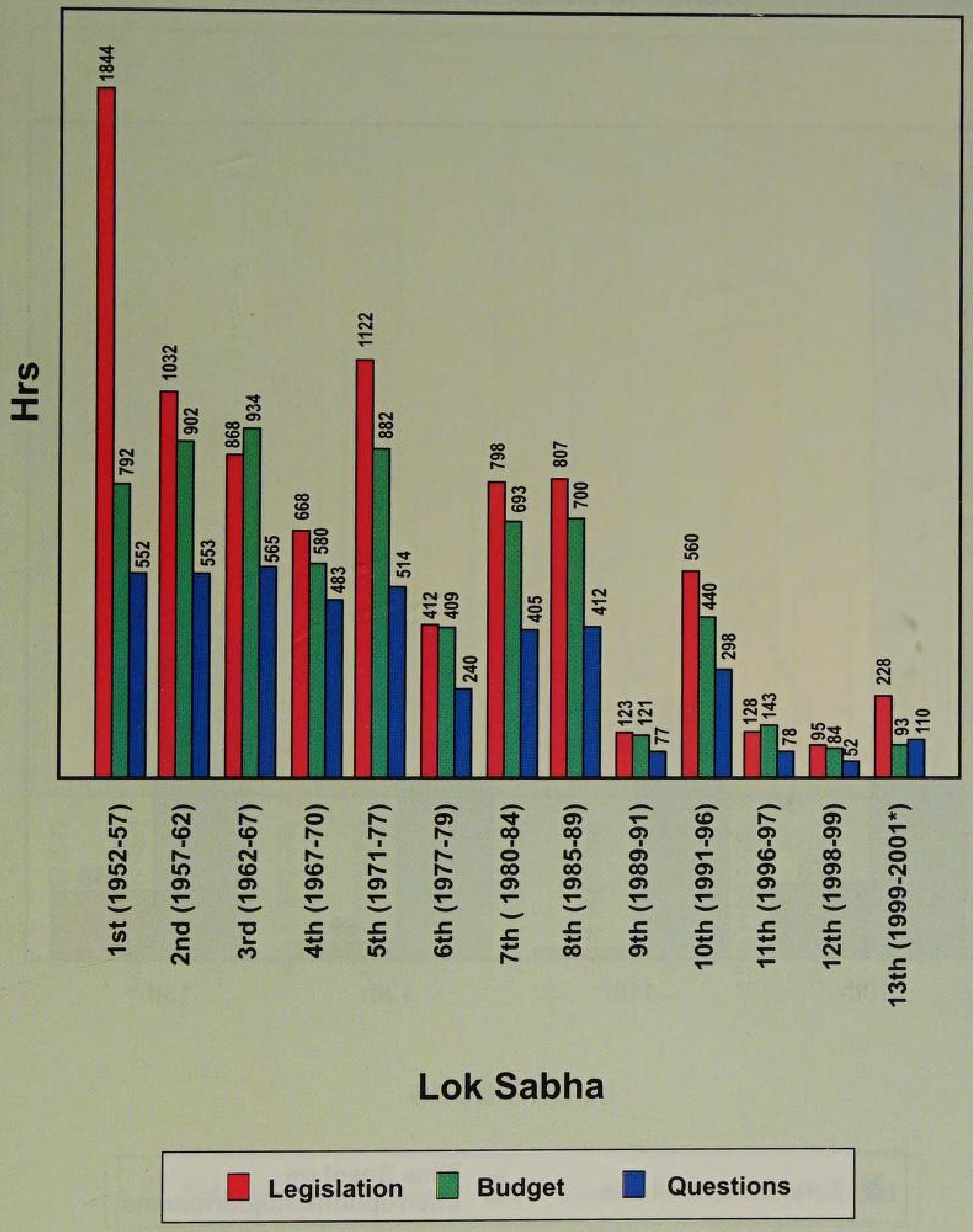
TIME SPENT ON LEGISLATION, QUESTIONS AND BUDGET

(First to Thirteenth Lok Sabha)



* Upto Seventh Session
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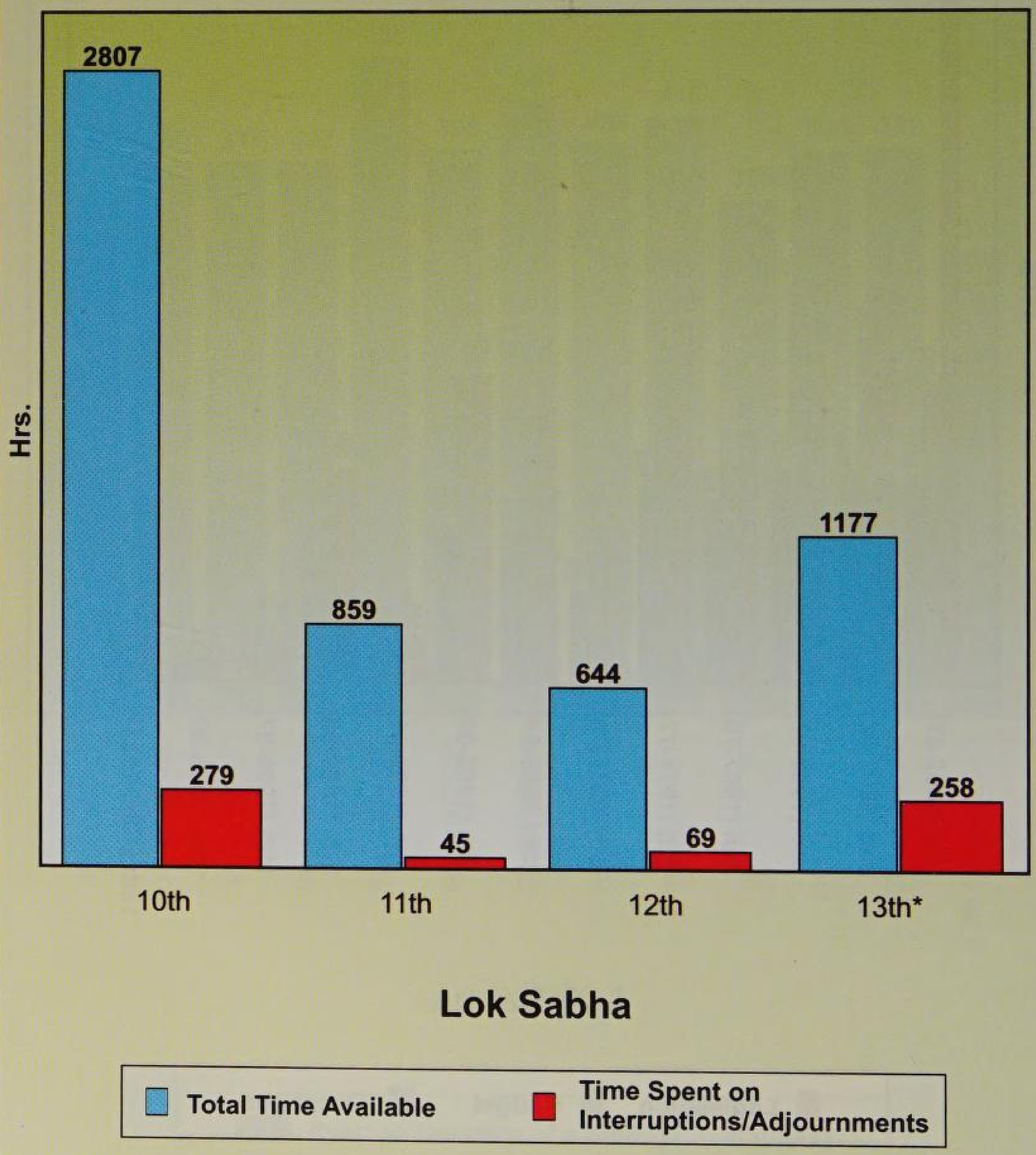
TOTAL TIME AVAILABLE AND TIME SPENT ON INTERRUPTIONS/ADJOURNMENTS DUE TO DISORDERLY SCENES IN THE HOUSE

(Tenth to Thirteenth Lok Sabha)



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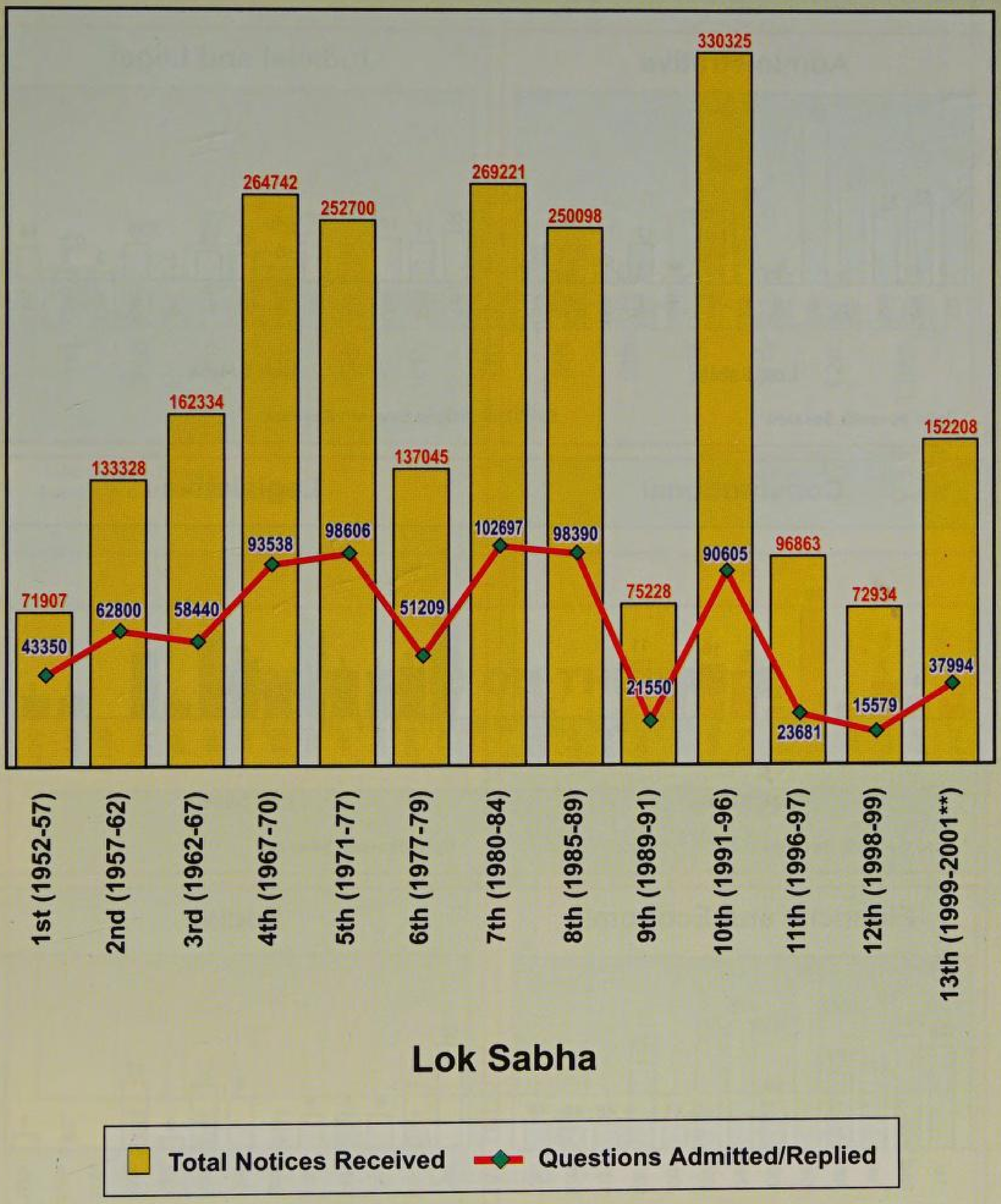
PARLIAMENTARY QUESTIONS*: TOTAL NOTICES RECEIVED AND QUESTIONS ADMITTED / REPLIED

(First to Thirteenth Lok Sabha)



* Starred, Unstarred and Short Notice Questions

** Upto Seventh Session

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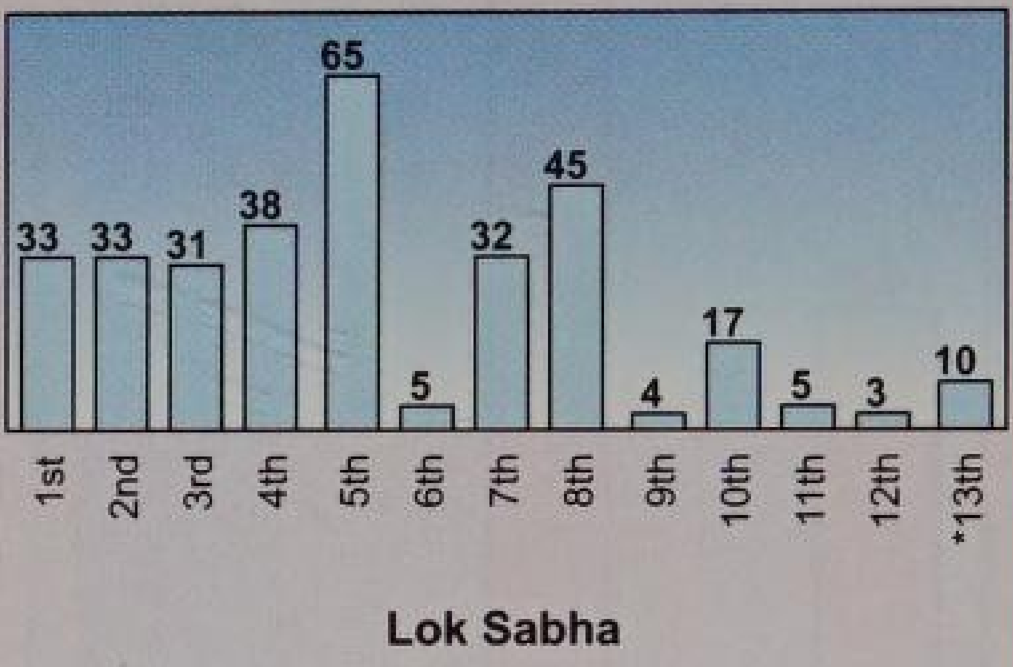
SUBJECT-WISE NUMBER OF BILLS PASSED & ASSENTED TO BY THE PRESIDENT

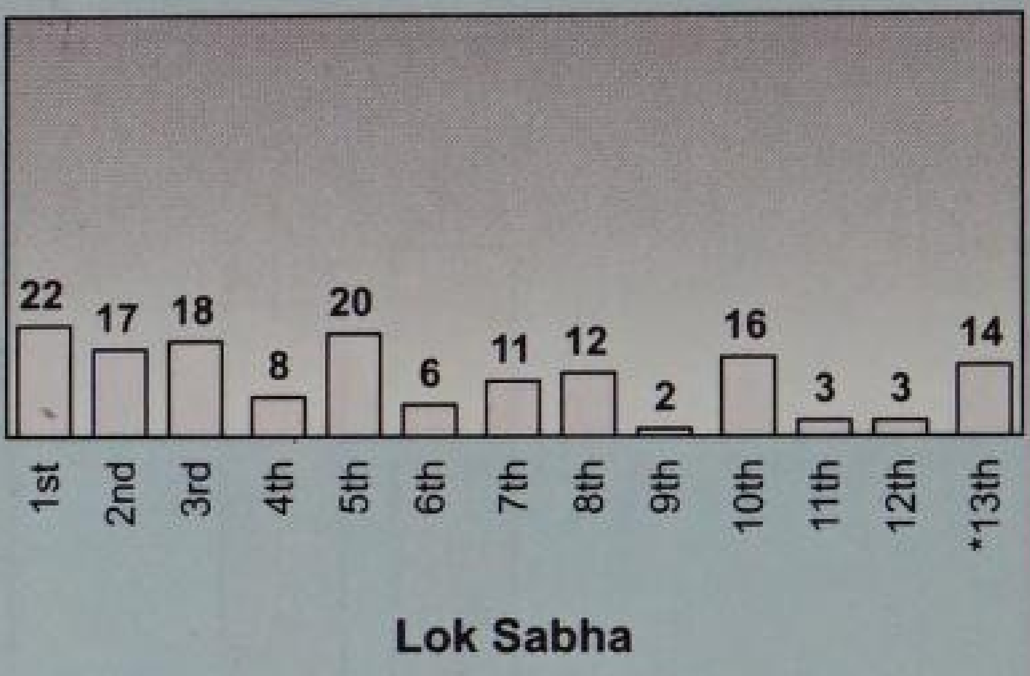
(First to Thirteenth Lok Sabha)

Administrative



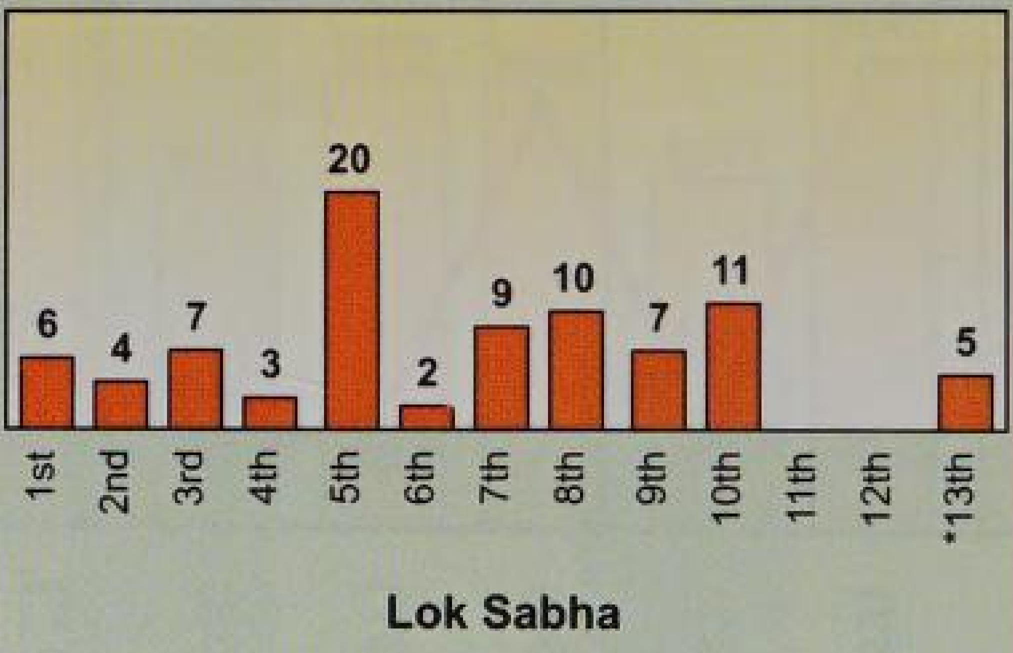
* Upto Seventh Session

Judicial and Legal



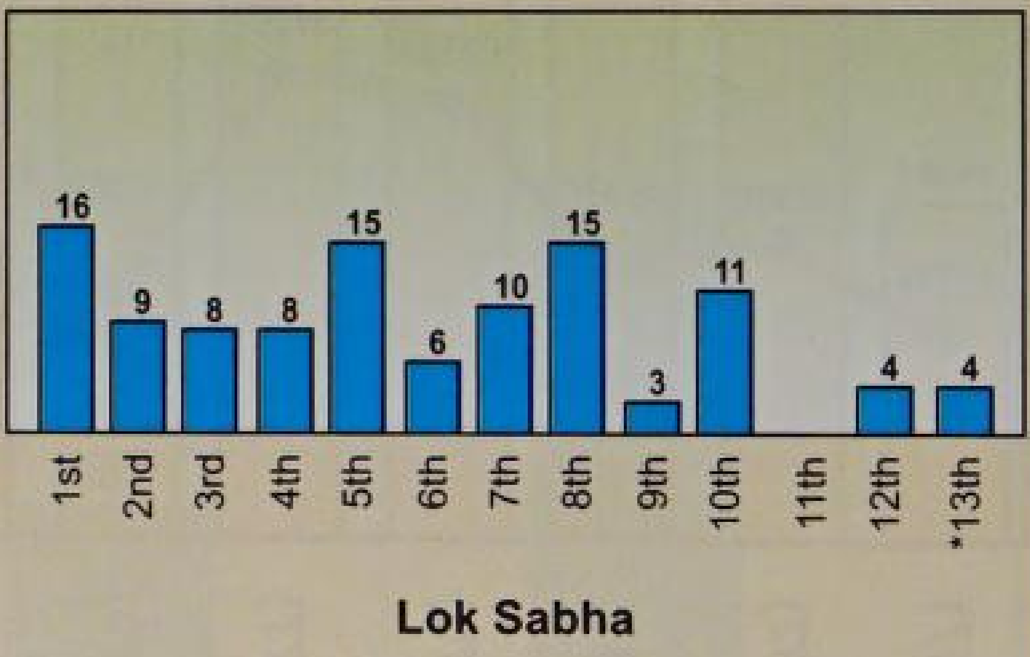
* Upto Seventh Session

Constitutional



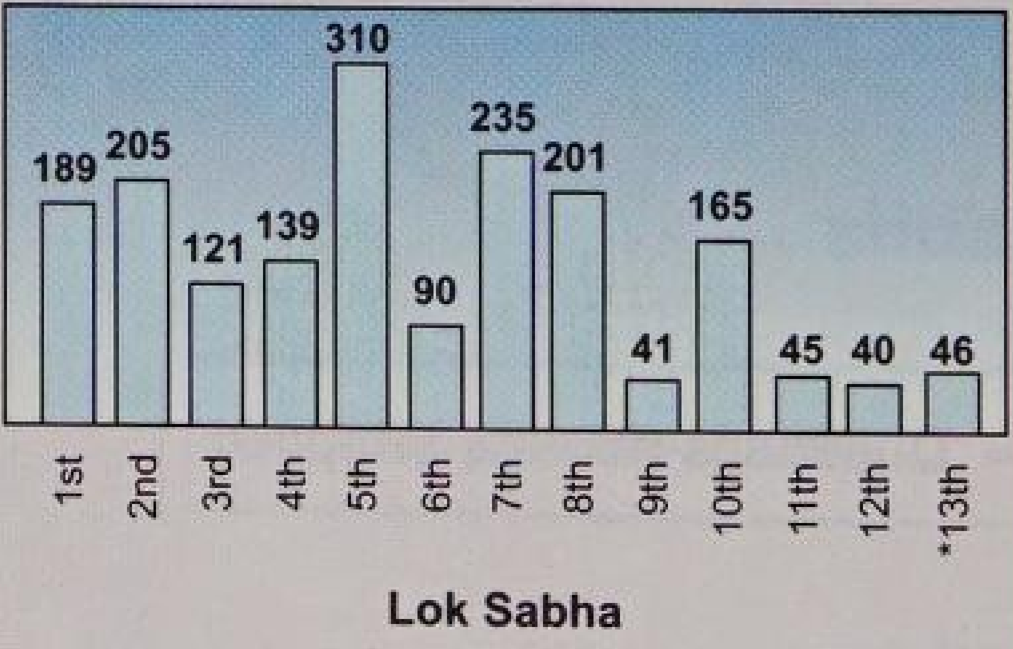
* Upto Seventh Session

Legislative



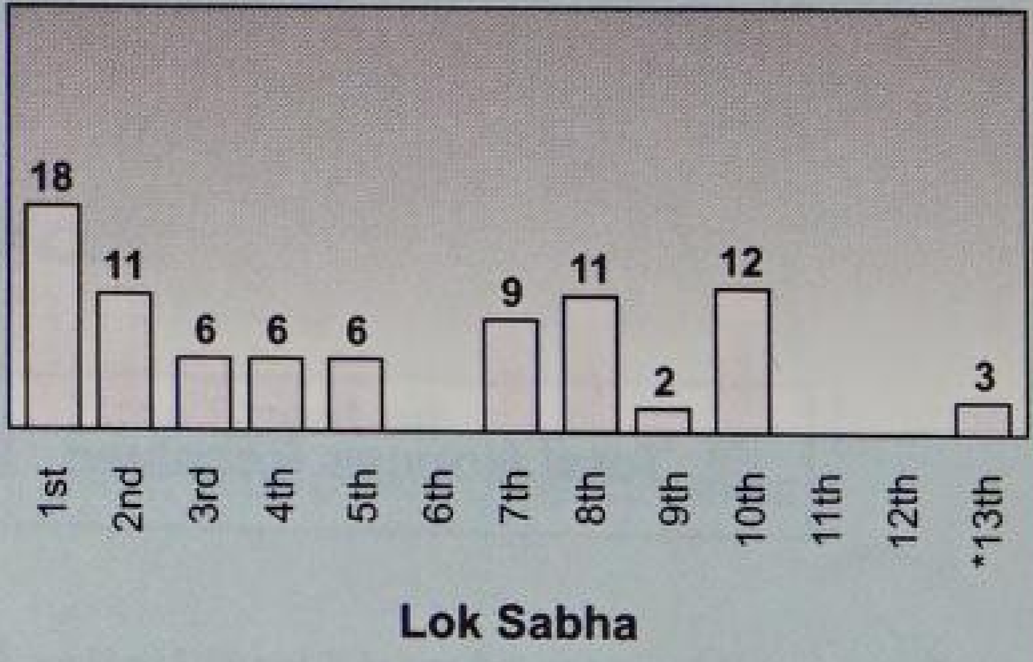
* Upto Seventh Session

Financial and Economic



* Upto Seventh Session

Social



* Upto Seventh Session

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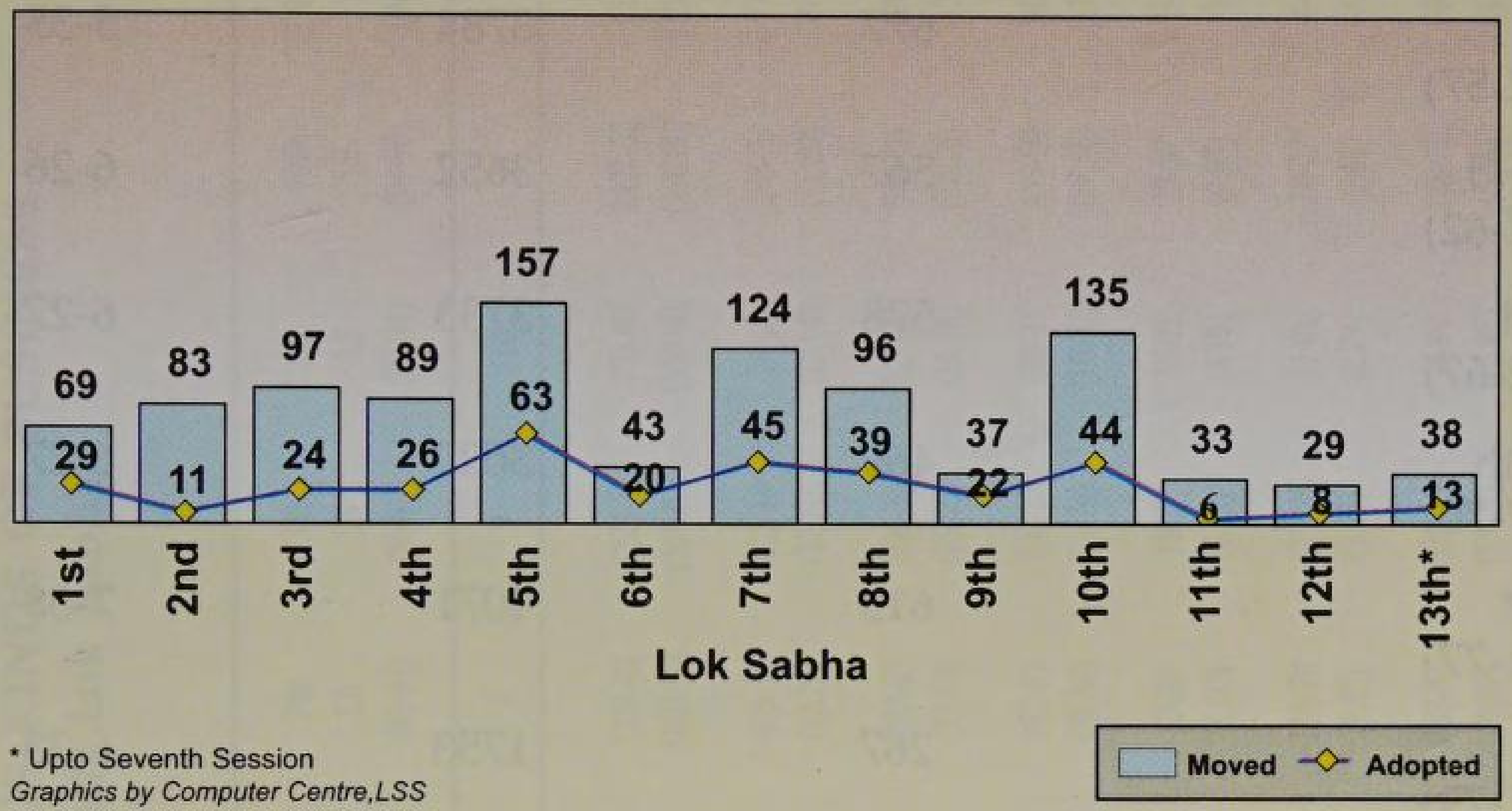
RESOLUTIONS DISCUSSED

(First to Thirteenth Lok Sabha)



* Upto Seventh Session

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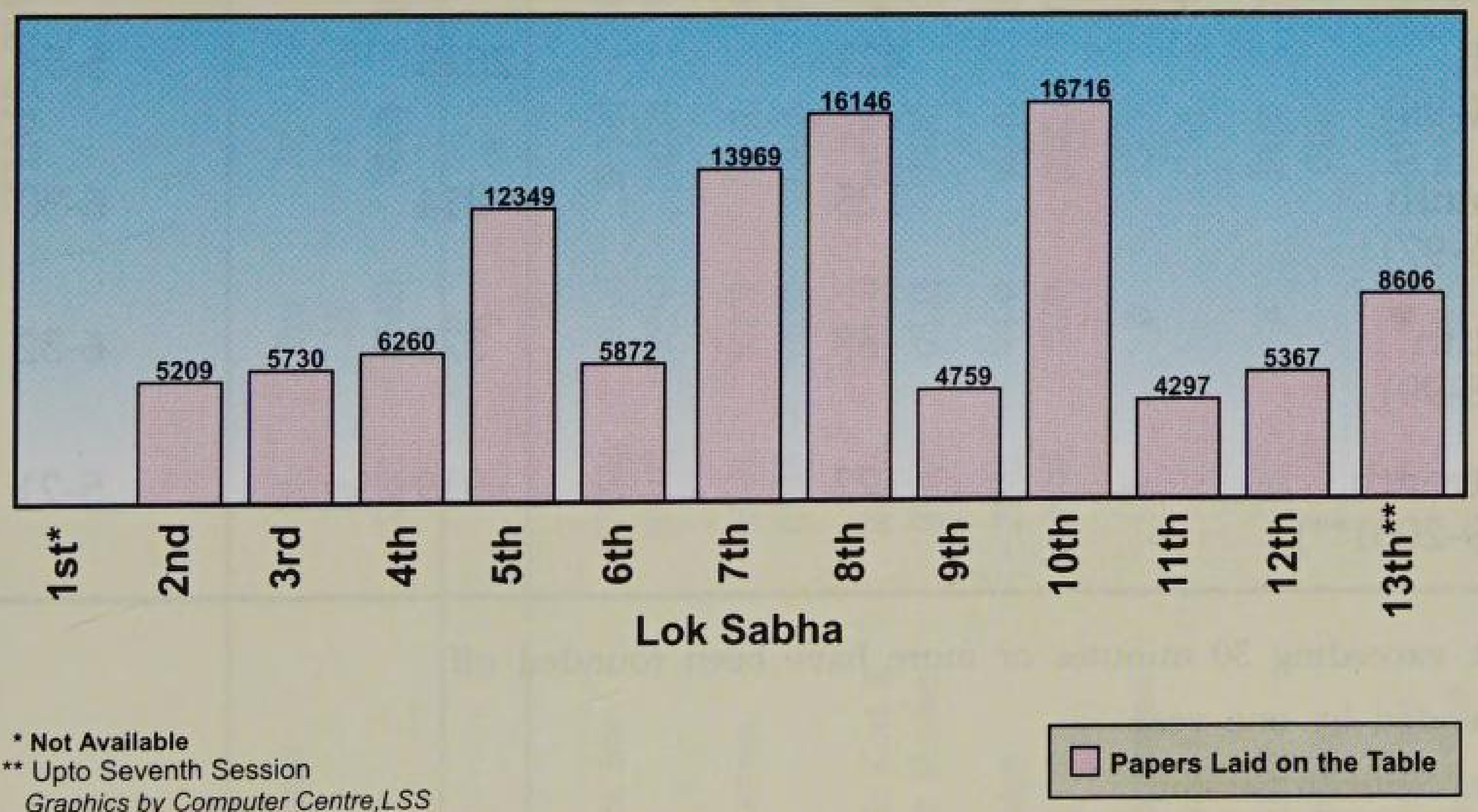
PAPERS LAID ON THE TABLE

(First to Thirteenth Lok Sabha)



* Not Available

** Upto Seventh Session

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TABLE-1

SITTINGS HELD AND TIME SPENT
(First to Thirteenth Lok Sabha)

Lok Sabha	No. of Sittings (Days)	Time Taken in Hrs.@	Average per day Hrs.-Mts.
First (1952-57)	677	3784	5-35
Second (1957-62)	567	3652	6-26
Third (1962-67)	578	3733	6-27
Fourth (1967-70)	469	3029	6-27
Fifth* (1971-77)	613	4071	7-38
Sixth (1977-79)	267	1753	6-33
Seventh (1980-84)	464	3324	7-09
Eighth (1985-89)	485	3224	6-38
Ninth (1989-91)	109	754	6-55
Tenth (1991-96)	423	2528	5-58
Eleventh (1996-97)	125	814	6-30
Twelfth (1998-99)	88	575	6-32
Thirteenth (1999-2001**)	172	919	5-21

@Hrs. exceeding 30 minutes or more have been rounded off.

*Extended by one year.

**Upto Seventh Session.

TABLE-2

TIME TAKEN ON VARIOUS KINDS OF BUSINESS
(First to Thirteenth Lok Sabha)

(Time in Hrs.-Mts.)

Business	1st LS (52-57)	2nd LS (57-62)	3rd LS (62-67)	4th LS (67-70)	5th LS (71-77)	6th LS (77-79)	7th LS (80-84)	8th LS (85-89)	9th LS (89-91)	10th LS (91-96)	11th LS (96-97)	12th LS (98-99)	13th LS (99-01*)
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Total time	3783-54 (100.00)	3651-35 (100.00)	3732-40 (100.00)	3029-24 (100.00)	4071-00 (100.00)	1753-06 (100.00)	3324-01 (100.00)	3223-52 (100.00)	754.00 (100.00)	2527-52 (100.00)	813-38 (100.00)	574-55 (100.00)	918-49 (100.00)
Questions	551-51 (15.00)	552-32 (15.10)	564-41 (15.10)	482-53 (25.94)	513-32 (12.61)	240-25 (13.70)	405-26 (12.20)	412-16 (12.80)	76-45 (10.14)	298-23 (11.80)	77-56 (9.58)	51-30 (8.96)	109-56 (11.96)
Bills (Govt. & Pvt. Members')	1844-23 (49.00)	1031-58 (28.20)	867-58 (23.00)	668-22 (22.05)	1121-52 (27.55)	412-28 (23.51)	797-48 (23.99)	806-59 (25.05)	122-37 (16.18)	560-03 (22.16)	128-15 (15.66)	95-25 (16.60)	228-15 (24.84)
Budget	792-22 (19.00)	901-49 (24.70)	934-11 (25.02)	579-33 (19.13)	881-34 (21.64)	408-41 (23.26)	692-53 (20.84)	700-27 (21.74)	121-11 (16.00)	439-50 (17.38)	143-11 (17.60)	84-26 (14.68)	93-22 (10.16)
Adjournment Motions	@	@	41-25 (1.10)	40-28 (1.33)	63-49 (1.56)	25-06 (1.42)	33-20 (1.00)	18-27 (0.56)	36-02 (4.78)	23-37 (0.93)	5-57 (0.98)	Nil Nil	15-08 (1.65)
Calling Attention	@	@	111-00 (3.00)	146-47 (4.83)	215-37 (5.29)	87-54 (4.99)	318-20 (9.85)	123-58 (3.85)	21-01 (2.79)	10-27 (0.41)	6-51 (0.84)	5-36 (0.97)	15-03 (1.64)
Discussions under Rules 55 & 193	@	@	112-30 (3.00)	234-59 (7.74)	264-04 (6.47)	72-02 (4.07)	303-53 (9.90)	508-25 (15.77)	98-04 (12.95)	188-32 (7.46)	68-04 (8.36)	110-06 (19.15)	162-36 (17.70)

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Matters under Rule 377	@	@	@	@	@	@	103-22 (3.19)	79-32 (2.46)	16-15 (2.14)	46-17 (1.83)	16-09 (1.98)	11-51 (2.06)	18-31 (2.02)
Motions	270-32 (7.00)	499-44 (13.70)	487-24 (13.20)	279-57 (9.22)	267-05 (6.55)	188-12 (10.70)	211-36 (6.35)	199-22 (3.66)	33-16 (4.35)	160-15 (6.53)	141-00 (17.33)	60-03 (10.45)	27-33 (2.99)
Debate on President's Address	@	@	105-01 (2.9)	69-26 (2.29)	88-03 (2.15)	45-48 (2.59)	60-34 (1.82)	77-06 (2.40)	34-36 (4.56)	84-03 (3.32)	16-30 (2.03)	24-45 (4.30)	38-29 (4.19)
Resolutions	237-11 (6.00)	199-34 (5.50)	217-23 (5.90)	194-55 (6.45)	211-24 (5.17)	66-03 (3.42)	134-51 (3.96)	175-47 (5.47)	43-54 (5.72)	157-29 (6.23)	38-23 (4.63)	25-34 (4.45)	33-46 (3.68)
Statements	@	@	68-40 (1.80)	54-26 (1.79)	117-00 (2.87)	27-04 (1.54)	44-41 (1.30)	36-59 (1.15)	11-49 (1.52)	33-52 (1.34)	10-28 (1.29)	6-40 (1.16)	8-04 (0.88)
Other Matters	177-35 (4.00)	465-58 (12.80)	222-27 (6.00)	277-38 (9.15)	327-10 (8.03)	179-23 (10.19)	217-17 (6.50)	164-25 (5.09)	138-30 (18.34)	525-04 (20.77)	159-54 (19.65)	98-59 (17.22)	168-06 (18.29)

Note: Figures in brackets show percentage to total time.

* Upto Seventh Session.

@ Not available.

TABLE-3

TIME SPENT/LOST ON INTERRUPTIONS/ADJOURNMENTS DUE TO DISORDERLY SCENES IN THE HOUSE

Lok Sabha	Total Time Spent on the Business Transacted (a)		Time Spent on Interruptions/ Adjournments due to disorderly scenes (b)		Total Time (a+b)		Percentage of time spent/lost on Interruptions/ Adjournments due to disorderly scenes
	Hrs.	Mts.	Hrs.	Mts.	Hrs.	Mts.	
Tenth	2527	52	279	25	2807	17	9.95
Eleventh	813	38	45	20	858	58	5.28
Twelfth	574	55	68	37	643	32	10.66
Thirteenth*	918	49	258	08	1176	57	21.93

*Upto Seventh Session.

TABLE-4

PARLIAMENTARY QUESTIONS*: TOTAL NOTICES RECEIVED AND QUESTIONS ADMITTED/REPLIED

(First to Thirteenth Lok Sabha)

Lok Sabha	Total Notices Received	Admitted and Replied	Percentage to Total
First (1952-57)	71907	43350	60
Second (1957-62)	133328	62800	47
Third (1962-67)	162334	58440	36
Fourth (1967-70)	264742	93538	35
Fifth (1971-77)	252700	98606	39
Sixth (1977-79)	137045	51209	37
Seventh (1980-84)	269221	102697	38
Eighth (1985-89)	250098	98390	39
Ninth (1989-91)	75228	21550	29
Tenth (1991-96)	330325	90605	27
Eleventh (1996-97)	96863	23681	24
Twelfth (1998-99)	72934	15579	21
Thirteenth** (1999-2001)	152208	37994	25

*Starred, Unstarred and Short Notice Questions.

**Upto Seventh Session.

TABLE-5

PARLIAMENTARY QUESTIONS
(First to Thirteenth Lok Sabha)

Lok Sabha	Starred Questions (SQ)			Unstarred Questions (USQ)			Short Notice Questions (SNQ)			Total: SQ+ USQ+SNQ
	Notices Received	Admitted%	Reply: orally/ laid on the Table	Notices Received	Admitted*	Replied	Notices Received	Admitted	Replied	Admitted and Replied
1	2	3	4	5	6	7	8	9	10	11
First@ (1952-57)	NA	NA	14848	NA	NA	28502	NA	NA	NA	43350
Second (1957-62)	111796	22338	22338	18426	40229	40229	3106	233	233	62800
Third (1962-67)	145580	14312	14312	12021	43840	43840	4733	288	288	58440
Fourth (1967-70)	239558	14833	14833	11827	78467	78467	13357	238	238	93538
Fifth (1971-77)	212638	11439	11439	35961	87097	87097	4101	70	70	98606
Sixth (1977-79)	109999	5052	5052	23372	46094	46094	3674	63	63	51209
Seventh (1980-84)	203964	9186	9186	63640	29736	93506	1617	5	5	102697

1	2	3	4	5	6	7	8	9	10	11
Eighth (1985-89)	187945	9115	9115	61299	25761	89256	854	19	19	98390
Ninth (1989-91)	57608	1845	1847	17184	19696	19696	436	7	7	21550
Tenth (1991-96)	265995	8209	8120	63865	19614	82479	465	6	6	90605
Eleventh (1996-97)	79702	2061	2061	17074	4908	21616	87	4	4	23681
Twelfth (1998-99)	60431	1360	1360	12444	3044	14217	59	2	2	15579
Thirteenth** (1999-2001)	119551	3260	3260	32477	8292	34726	180	8	8	37994

@ A total of 90,803 notices of Questions were received during the First Lok Sabha of which 43,350 were admitted.

% Includes those Short Notice Questions which were admitted as Starred Questions.

* Includes those Questions notices in respect of which, were received for their being admitted as Starred Questions but which were actually admitted as Unstarred Questions. Also includes those Short Notice Questions which were admitted as Unstarred Questions.

** Upto Seventh Session.

TABLE-6

BILLS INTRODUCED AND PASSED (First to Thirteenth Lok Sabha)

Lok Sabha	Government Bills		Private Members' Bills	
	Introduced	Passed*	Introduced	Passed
First (1952-57)	274	319	135	7
Second (1957-62)	274	316	194	2
Third (1962-67)	278	273	177	3
Fourth (1967-70)	196	219	347	2
Fifth (1971-77)	378	487	282	Nil
Sixth (1977-79)	161	136	249	Nil
Seventh (1980-84)	290	336	435	Nil
Eighth (1985-89)	273	346	417	Nil
Ninth (1989-91)	81	63	156	Nil
Tenth (1991-96)	248	284	406	Nil
Eleventh (1996-97)	67	64	158	Nil
Twelfth (1998-99)	71	60	122	Nil
Thirteenth** (1999-2001)	118	141	239	Nil

* Including those passed by Rajya Sabha and laid on the Table of Lok Sabha and passed.

** Upto Seventh Session.

TABLE-7

SUBJECT-WISE CLASSIFICATION OF BILLS PASSED & ASSENTED TO BY THE PRESIDENT (First to Thirteenth Lok Sabha)

Lok Sabha	Adminis-trative	Judicial and Legal	Consti-tutional	Legis-lative	Financial and Economic	Social	Others*	Total
First (1952-57)	33	22	6	16	189	18	35	319
Second (1957-62)	33	17	4	9	205	11	30	309
Third (1962-67)	31	18	7	8	121	6	75	266
Fourth (1967-70)	38	8	3	8	139	6	11	213
Fifth (1971-77)	65	20	20	15	310	6	46	482
Sixth (1977-79)	5	6	2	6	90	—	8	117
Seventh (1980-84)	32	11	9	10	235	9	23	329
Eighth (1985-89)	45	12	10	15	201	11	39	333
Ninth (1989-91)	4	2	7	3	41	2	3	62
Tenth (1991-96)	17	16	11	11	165	12	43	275
Eleventh (1996-97)	5	3	—	—	45	—	8	61
Twelfth (1998-99)	3	3	—	4	40	—	6	56
Thirteenth** (1999-2001)	10	14	5	4	46	3	54	136

*Including Defence, Education, Culture, Health, etc.

**Upto Seventh Session.

TABLE-8

TIME SPENT ON BUDGET (First to Thirteenth Lok Sabha)

Lok Sabha	Total Duration Hrs-Mts	General Budget* Hrs-Mts	Railway Budget Hrs-Mts	Budgets of States/UTs Hrs-Mts	Total Time Spent on Financial Business Hrs-Mts
First	3783-54	NA	NA	NA	792.22
(1952-57)	(100)				(19.00)
Second	3651-35	764-09	129-55	7-45	901-49
(1957-62)	(100)	(20.90)	(3.60)	(0.20)	(24.70)
Third	3732-40	762-39	151-26	20-06	934-11
(1962-67)	(100)	(20.43)	(4.05)	(0.54)	(25.02)
Fourth	3029-24	434-42	108-59	35-52	579-33
(1967-70)	(100)	(14.34)	(3.61)	(1.18)	(19.13)
Fifth	4071-00	659-31	149-12	72-51	881-34
(1971-77)	(100)	(16.20)	(3.66)	(1.78)	(21.64)
Sixth	1753-06	330-23	65-59	12-19	408-41
(1977-79)	(100)	(18.83)	(3.74)	(0.69)	(23.26)
Seventh	3324-01	507-18	119-10	66-25	692-53
(1980-84)	(100)	(15.26)	(3.58)	(2.00)	(20.84)
Eighth	3223-52	546-39	119-45	34-03	700-27
(1985-89)	(100)	(16.94)	(3.74)	(1.06)	(21.74)
Ninth	754-00	93-50	15-11	12-10	121-11
(1989-91)	(100)	(12.40)	(2.00)	(1.60)	(16.00)
Tenth	2527-52	263-35	131-31	44-44	439-50
(1991-96)	(100)	(10.43)	(5.18)	(1.77)	(17.38)
Eleventh	813-38	53-45	79-24	10-02	143-11
(1996-97)	(100)	(6.61)	(9.76)	(1.23)	(17.60)
Twelfth	574-55	38-18	44-57	1-11	84-26
(1998-99)	(100)	(6.66)	(7.82)	(0.20)	(14.68)
Thirteenth	918-49	56-21	35-28	1-33	93-22
(1999-2001)**	(100)	(6.13)	(3.86)	(0.16)	(10.15)

* Including Supplementary Demands for Grants.

** Upto Seventh Session.

Note: Figures in brackets show percentage to total time.

TABLE-9

RESOLUTIONS DISCUSSED
(First to Thirteenth Lok Sabha)

Lok Sabha	Speaker	Government			Statutory					Pvt. Members					Total				
	M&A	M	A	DN	M	A	N	W	DN	M	A	N	W	DN	M	A	N	W	DN
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
First (1952-57)	—	21	20	1	—	—	—	—	—	48	9	24	11	4	69	29	24	11	5
Second (1957-62)	—	9	9	—	8	1	7	—	—	66	1	35	29	1	83	11	42	29	1
Third (1962-67)	—	5	5	—	14	11	3	—	—	78	8	28	23	19	97	24	31	23	19
Fourth (1967-70)	1	6	6	—	36	14	18	4	—	46	5	23	7	11	89	26	41	11	11
Fifth (1971-77)	—	14	14	—	88	45	43	—	—	55	4	18	15	18	157	63	61	15	18
Sixth (1977-79)	3	6	6	—	9	7	2	—	—	25	4	5	8	8	43	20	7	8	8
Seventh (1980-84)	3	8	8	—	74	33	41	—	—	39	1	16	8	14	124	45	57	8	14
Eighth (1985-89)	8	11	11	—	48	20	25	3	—	29	—	7	7	15	96	39	32	10	15

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Ninth (1989-91)	5	4	4	—	20	12	2	6	—	8	1	1	2	4	37	22	3	8	4
Tenth (1991-96)	7	7	7	—	91	30	36	24	1	30	—	6	8	16	135	44	42	32	17
Eleventh (1996-97)	1	2	2	—	23	3	7	13	—	7	—	—	3	4	33	6	7	16	4
Twelfth (1998-99)	—	5	5	—	22	3	6	12	1	2	—	—	1	1	29	8	6	13	2
Thirteenth* (1999-2001)	2	6	6	—	16	5	6	5	—	14	—	—	8	6	38	13	6	13	6

*Upto Seventh Session.

M: Moved, A: Adopted, N: Negatived, W: Withdrawn, DN: Discussion not concluded.

TABLE-10

PAPERS LAID ON THE TABLE
(First to Thirteenth Lok Sabha)

Lok Sabha	By Government	By Private Members	Total
First (1952-57)	NA	NA	—
Second (1957-62)	5190	19	5209
Third (1962-67)	5702	28	5730
Fourth (1967-70)	6215	45	6260
Fifth (1971-77)	12326	23	12349
Sixth (1977-79)	5851	21	5872
Seventh (1980-84)	13946	23	13969
Eighth (1985-89)	16138	8	16146
Ninth (1989-91)	4758	1	4759
Tenth (1991-95)	16716	—	16716
Eleventh (1996-97)	4297	—	4297
Twelfth (1998-99)	5366	1	5367
Thirteenth* (1999-2001)	8606	Nil	8606

*Upto Seventh Session.

TABLE-11

ACTIVITIES OF PARLIAMENTARY COMMITTEES
I. FINANCIAL COMMITTEES
(First to Thirteenth Lok Sabha)

Lok Sabha	No. of Sittings	Duration Hrs.-Mts.	Reports presented
First (1952-57)	—	—	—
Second (1957-62)	508	1223-00	187
Third (1962-67)	836	2244-00	213
Fourth (1967-70)	650	1366-00	326
Fifth (1971-77)	1138	2678-00	454
Sixth (1977-79)	425	848-00	249
Seventh (1980-84)	1140	2244-20	421
Eighth (1985-89)	549	1209-00	406
Ninth (1989-91)	103	237-00	67
Tenth (1991-96)	401	774-40	230
Eleventh (1996-97)	112	194-55	45
Twelfth (1998-99)	56	87-30	22
Thirteenth* (1999-2001)	55	85-50	42

*Upto Seventh Session.

II. DEPARTMENTALLY RELATED STANDING COMMITTEES*
(Tenth to Thirteenth Lok Sabha)

Lok Sabha	No. of Sittings	Duration Hrs.-Mts.	Reports presented
Tenth (1991-96)	928	1629-36	261
Eleventh (1996-97)	402	697-50	124
Twelfth (1998-99)	341	683-10	154
Thirteenth** (1999-2001)	292	513-06	185

* The Departmentally-related Standing Committees were first constituted on 8 April 1993 during the Sixth Session of the Tenth Lok Sabha.

** Upto Seventh Session.

III. OTHER COMMITTEES
(First to Thirteenth Lok Sabha)

	A Other Standing Committees		B *Ad hoc* Committees	
	No. of Sittings	Reports presented	No. of Sittings	Reports presented
First (1952-57)	—	—	—	—
Second (1957-62)	406	241	312	36
Third (1962-67)	386	207	280	33
Fourth (1967-70)	643	209	295	21
Fifth (1971-77)	1017	357	579	26
Sixth (1977-79)	540	223	98	3
Seventh (1980-84)	955	329	202	5
Eighth (1985-89)	923	330	55	2
Ninth (1989-91)	217	70	2	—
Tenth (1991-96)	703	324	96	1
Eleventh (1996-97)	157	75	—	—
Twelfth (1998-99)	110	42	8	1
Thirteenth* (1999-2001)	179	98	24	9

*Upto Seventh Session.

IMPORTANT SOCIAL WELFARE LEGISLATIONS ENACTED BY THE PARLIAMENT OF INDIA

IMPORTANT SOCIAL WELFARE LEGISLATIONS ENACTED BY THE PARLIAMENT OF INDIA*

CONSTITUTIONAL AMENDMENTS

1. The Constitution (First Amendment) Act, 1951.

(During the first fifteen months of the working of the Constitution, certain difficulties had been brought to light by judicial decisions and pronouncements specially in regard to Fundamental Rights. Thus, the citizen's right to freedom of speech and expression under article 19(1)(a) had been held by some courts to be so comprehensive as not to render a person culpable even if he advocated murder and other crimes of violence. Again, although the citizen's right, under article 19(1)(g), to practice any profession or to carry on any occupation, trade or business was subject to "reasonable restrictions" which the laws of the State might impose" in the interest of the general public", and although these words were comprehensive enough to cover any scheme of nationalisation which the State might undertake, it was considered desirable to place the matter beyond doubt by a clarificatory addition to article 19(6). Article 31 had also given rise to unanticipated difficulties for, notwithstanding the provisions of clauses (4) and (6) of article 31, the implementation of important measures of agrarian reforms passed by the State Legislatures had been held up due to dilatory litigation.

The main objects of the Act, *inter alia,* were, accordingly, to amend article 19 for the purpose indicated above and to insert provisions fully securing the constitutional validity of the *Zamindari* abolition laws in general and certain specified State Acts in particular. The Act amplified article 15(3) so as to ensure that any special provisions that the State may make for the educational, economic or social advancement for any backward class of citizens may not be challenged on the ground of being discriminatory).

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*Ever since Independence, the Parliament of India has acted as a vehicle of social change. Over the years, many social welfare legislations have been enacted by Parliament. Some of the more important legislations are enumerated here.

2. The Constitution (Eighth Amendment) Act, 1960.

   (Extension of reservation of seats for SCs/STs and Anglo-Indians in the Lok Sabha and the State Legislative Assemblies for another ten years).

3. The Constitution (Twenty-fourth Amendment) Act, 1971.

   (In the *Golak Nath's case,* the Supreme Court reversed by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all parts of the Constitution, including Part III relating to the Fundamental Rights. The result of the judgment was that the Parliament was considered to have no power to take away or curtail any of the Fundamental Rights even if it became necessary to do so for giving effect to the Directive Principles of State Policy and for the attainment of the objectives set out in the Preamble to the Constitution. The Act, therefore, amended the Constitution to provide expressly that Parliament has power to amend any part of the Constitution).

4. The Constitution (Twenty-fifth Amendment) Act, 1971.

   (Article 31 of the Constitution specifically provided that no law providing for the compulsory acquisition or requisitioning of property which either fixed the amount of compensation or specified the principles on which and the manner in which the compensation was to be determined and given could be called in question in any court on the ground that the compensation provided by that law was not adequate. In the *Bank Nationalisation case,* the Supreme Court had held that the Constitution guaranteed right to compensation, that is, the equivalent in money of the property compulsorily acquired. Thus, in effect, the adequacy of compensation and the relevancy of the principles laid down by the Legislature for determining the amount of compensation had virtually become justifiable inasmuch as the Court could go into the question whether the amount paid to the owner of the property was what might be regarded reasonable as compensation for loss of property. In the same case, the Court had also held that a law which sought to acquire or requisition property for a public purpose should also satisfy the requirements of article 19(1)(f).

   The Act amended the Constitution to surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy by the aforesaid interpretation.)

5. The Constitution (Twenty-sixth Amendment) Act, 1971.

   (Abolition of Privy Purses).

6. The Constitution (Twenty-ninth Amendment) Act, 1972.

   (Inclusion of the Kerala Land Reforms Act, 1963 in the Ninth Schedule to the Constitution).

7. The Constitution (Thirty-fourth Amendment) Act, 1974.

   (The Chief Ministers' Conference held on 23 July 1972 had made important suggestions with regard to reduction in the level of ceiling on land holdings, application of ceiling on the basis of land held by a family and the withdrawing of exemptions. The suggestions of the Chief Ministers' Conference were accepted by the Government of India and necessary guidelines were issued to the State Governments for the revision of ceiling laws.

   The Act amended the Ninth Schedule to the Constitution to include therein the revised ceiling laws which had till then been enacted in broad conformity with the aforesaid guidelines so that they may have the protection under article 31B of the Constitution and any uncertainty or doubt regarding their validity is removed.)

8. The Constitution (Forty-second Amendment) Act, 1976.

   (*Inter alia* insertion of the words 'Socialist Secular' in the Preamble to the Constitution; and insertion of Fundamental Duties).

9. The Constitution (Forty-fourth Amendment) Act, 1978.

   (The Act amended the Constitution to take away from the category of Fundamental Rights the right to property, which had been the cause of several amendments of the Constitution, and make it only a legal right; to put the right to life and liberty on a secure footing; to provide safeguards against the misuse of the emergency provision; to guarantee the right of the media to report freely and without censorship the proceedings in Parliament and State Legislatures; to minimise judicial delays; and to remove or correct the distortions which came into the Constitution by reason of the amendments enacted during the period of the internal emergency).

10. The Constitution (Forty-fifth Amendment) Act, 1980.

    (Extension of reservation of seats for SCs, STs and Anglo-Indians in the Lok Sabha and the State Legislative Assemblies for another ten years).

11. The Constitution (Forty-seventh Amendment) Act, 1984.

    (Inclusion of land reforms Acts in the Ninth Schedule to the Constitution.

12. The Constitution (Forty-ninth Amendment) Act, 1984.

    (Providing constitutional sanctity to the Tripura Tribal Areas Autonomous District Council).

13. The Constitution (Fifty-first Amendment) Act, 1984.

    (Reservation of seats for STs in the Lok Sabha for Meghalaya, Nagaland, Arunachal Pradesh and Mizoram and similar reservation in the Legislative Assemblies of Nagaland and Mizoram).

14. The Constitution (Fifty-seventh Amendment) Act, 1987.

    (Readjustment of the 51st Amendment regarding the number of seats reserved for STs).

15. The Constitution (Sixty-first Amendment) Act, 1988.

    (Lowering of the voting age from 21 years to 18 years).

16. The Constitution (Sixty-second Amendment) Act, 1989.

    (Extension of reservation of seats in the Lok Sabha and the State Legislative Assemblies for SCs, STs and Anglo-Indians beyond 40 years for a further period of ten years).

17. The Constitution (Sixty-fifth Amendment) Act, 1990.

    (Provision for setting up of the National Commission for SCs and STs).

18. The Constitution (Sixty-sixth Amendment) Act, 1990.

    (Inclusion of land reforms Acts in the Ninth Schedule to the Constitution).

19. The Constitution (Seventy-second Amendment) Act, 1992.

    (Increase in the reservation of number of seats for STs in the Tripura Legislative Assembly).

20. The Constitution (Seventy-third Amendment) Act, 1992.

    (*Inter alia*, reservation of seats in panchayats for the SCs and STs and reservation of not less than one-third of the total seats for women).

21. The Constitution (Seventy-fourth Amendment) Act, 1992.

    (*Inter alia,* reservation of seats for SCs and STs in urban and local bodies and reservation of not less than one-third of the total seats for women).

22. The Constitution (Seventy-sixth Amendment) Act, 1994.

    (69 per cent reservation for SCs, STs and Backward Classes in educational institutions and appointments for posts in the services under the State in Tamil Nadu and inclusion of the same in the Ninth Schedule to the Constitution).

23. The Constitution (Seventy-seventh Amendment) Act, 1995.

    (Reservation in promotion for SCs and STs).

24. The Constitution (Seventy-eighth Amendment) Act, 1995.

    (Inclusion of land reforms Acts in the Ninth Schedule to the Constitution).

25. The Constitution (Seventy-ninth Amendment) Act, 1999.

    (Extension of reservation of seats for the SCs, STs and Anglo-Indians in the Lok Sabha and the State Legislative Assemblies for another ten years).

26. The Constitution (Eightieth Amendment) Act, 2000.

    (Provision for an alternative scheme for sharing taxes between the Union and the States).

27. The Constitution (Eighty-first Amendment) Act, 2000.

    (To treat the vacancies which could not be filled up by direct recruitment on account of non-availability of the candidates belonging to the Scheduled Castes or the Scheduled Tribes as 'Backlog Vacancies' and to exclude them from the ceiling of fifty per cent reservation).

28. The Constitution (Eighty-second Amendment) Act, 2000.

    (Restoration of the relaxation of the qualifying marks and standards of evaluation in matters of reservation in promotion for SCs and STs).

29. The Constitution (Eighty-third Amendment) Act, 2000.

    (Providing that no reservation in panchayats need to be made in favour of the Scheduled Castes in Arunachal Pradesh wholly inhabited by tribal population).

30. The Constitution (Eighty-fourth Amendment) Act, 2002.

    (Provision for freezing readjustment of seats for the Lok Sabha and the State Legislative Assemblies based on the recent Census till 2026).

31. The Constitution (Eighty-fifth Amendment) Act, 2002.

    (Reservation in promotion for SCs and STs).

HEALTH

1. The Drugs and Magic Remedies (Objectionable Advertisements) Acts, 1954 and the subsequent Amendment Acts.
2. The Prevention of Food Adulteration Act, 1954 and the subsequent Amendment Acts.
3. The Spirituous Preparation (Inter-State Trade and Commerce) Control Act, 1955.
4. The Indian Red Cross Society (Amendment) Act, 1956 and the subsequent Amendment Acts.
5. The Indian Medical Council Act, 1956 and subsequent Amendment Act.
6. The Medical Termination of Pregnancy Act, 1971.
7. The Drugs and Cosmetics (Amendment) Act, 1972 and the subsequent Amendment Acts.
8. The Maternity Benefit Act, 1961 and the subsequent Amendment Acts.
9. The Ear Drums and Ear Bones (Authority for use for Therapeutic Purposes) Act, 1982.
10. The Eyes (Authority for use for Therapeutic Purposes) Act, 1982.
11. The Mental Health Act, 1987.
12. The Transplantation of Human Organs Act, 1994.
13. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and subsequent Amendment Act.
14. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
15. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

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2. The Coal Mines Labour Welfare Fund Act, 1947 and the subsequent Amendment Acts.
3. The Factories Act, 1948 and the subsequent Amendment Acts.
4. The Minimum Wages Act, 1948 and the subsequent Amendment Acts.
5. The Dock Workers (Regulation of Employment) Act, 1948 and the subsequent Amendment Acts.
6. The Coal Mines Provident Fund and Bonus Schemes Act, 1948 and the subsequent Amendment Act.
7. The Employees State Insurance Act, 1948 and the subsequent Amendment Acts.
8. The Plantation Labour Act, 1951 and the subsequent Amendment Acts.
9. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the subsequent Amendment Acts.
10. The Employees' Provident Funds and Family Pension Fund Act, 1952 and the subsequent Amendment Act.
11. The Working Journalists (Industrial Disputes) Act, 1955.
12. The Industrial Disputes (Banking Companies Decision) Act, 1955.
13. The Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955.
14. The Industrial Disputes (Amendment and Provisions) Act, 1956.
15. The Payment of Wages (Amendment) Act, 1957 (amending the Payment of Wages Act, 1936) and the subsequent Amendment Acts.
16. The Working Journalists (Fixation of Rates of Wages) Act, 1958.
17. The Workmen's Compensation (Amendment) Act, 1959 (amending the Workmen's Compensation Act, 1923) and the subsequent Amendment Acts.

18. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959.
19. The Indian Trade Unions (Amendment) Act, 1960 (amending the Trade Unions Act, 1926) and the subsequent Amendment Acts.
20. The Industrial Employment (Standing Orders) (Amendment) Act, 1961 [amending the Industrial Employment (Standing Orders) Act, 1946] and the subsequent Amendment Acts.
21. The Motor Transport Workers Act, 1961.
22. The Apprentices Act, 1961 and the subsequent Amendment Acts.
23. The Iron Ore Mines Labour Welfare Cess Act, 1961 and the subsequent Amendment Acts.
24. The Personal Injuries (Emergency Provisions) Act, 1962 and the subsequent Amendment Acts.
25. The Working Journalists (Amendment) Act, 1962.
26. The Personal Injuries (Compensation Insurance) Act, 1963.
27. The Payment of Bonus Act, 1965 and the subsequent Amendment Acts.
28. The Seamen's Provident Fund Act, 1966.
29. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and the subsequent Amendment Acts.
30. The Contract Labour (Regulation and Abolition) Act, 1970 and the subsequent Amendment Acts.
31. The Tea Districts Emigrant Labour (Repeal) Act, 1970.
32. The Labour Provident Fund Laws (Amendment) Act, 1971 and the subsequent Amendment Acts.
33. The Payment of Gratuity Act, 1972 and the subsequent Amendment Acts.
34. The Limestone and Dolomite Mines Labour Welfare Fund (Amendment) Act, 1972 and the subsequent Amendment Act.
35. The Sales Promotions Employees (Conditions of Service) Act, 1976 and the subsequent Amendment Acts.

36. The Bonded Labour System (Abolition) Act, 1976 and the subsequent Amendment Acts.
37. The Equal Remuneration Act, 1976 and the subsequent Amendment Acts.
38. The Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976.
39. The Beedi Workers Welfare Cess Act, 1976 and the subsequent Amendment Acts.
40. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976 and the subsequent Amendment Acts.
41. The Beedi Workers Welfare Fund Act, 1976.
42. The Employment of Children (Amendment) Act, 1978 (amending the Employment of Children Act, 1938) and the subsequent Amendment Acts.
43. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions (Amendment) Act, 1979 and the subsequent Amendment Acts.
44. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
45. The Mica Mines Labour Welfare Fund (Amendment) Act, 1980 amending the Mica Mines Labour Welfare Fund Act, 1946.
46. The Cine-workers Welfare Fund Act, 1981 and the subsequent Amendment Acts.
47. The Cine-workers Welfare Cess Act, 1981 and the subsequent Amendment Acts.
48. The Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981.
49. The Pensions (Amendment) Act, 1982 amending the Pensions Act, 1871.
50. The Coal Mines Labour Welfare Fund (Repeal) Act, 1986.
51. The Dock Workers (Safety, Health and Welfare) Act, 1986.
52. The Labour Welfare Fund Laws (Amendment) Act, 1987.
53. The Labour Laws (Exemption from Furnishing Returns and Maintaining Register by certain Establishment) Act, 1988.

54. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.
55. The National Commission for Safai Karamcharis Act, 1993 and the subsequent Amendment Acts.
56. The Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996.
57. The Building and Other Construction Workers' Welfare Cess Act, 1996.

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1. The Displaced Persons (Claims) Act, 1952.
2. The Abducted Persons (Recovery and Restoration) Amendment Act, 1952 and the subsequent Amendment Acts.
3. The Rehabilitation Finance Administration Act, 1953 and the subsequent Amendment Acts.
4. The Displaced Persons (Claims) Supplementary Act, 1954.
5. The Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the subsequent Amendment Acts.
6. The Special Marriage Act, 1954.
7. The Untouchability (Offences) Act, 1955 and the subsequent Amendment Acts.
8. The Hindu Marriage Act, 1955 and the subsequent Amendment Acts.
9. The Abducted Persons (Recovery and Restoration) Continuance Act, 1955 and the subsequent Amendment Acts.
10. The Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 and the subsequent Amendment Acts.
11. The Hindu Succession Act, 1956.
12. The Hindu Minority and Guardianship Act, 1956.
13. The Hindu Adoption and Maintenance Act, 1956 and the subsequent Amendment Acts.
14. The Young Persons (Harmful Publications) Act, 1956.
15. The Slum Areas (Improvement and Clearance) Act, 1956.

16. The Suppression of Immoral Traffic in Women and Girls Act, 1956 and the subsequent Amendment Acts.
17. The Women's and Children's Institution (Licensing) Act, 1956.
18. The Indian Succession (Amendment) Act, 1957 (amending the Indian Succession Act, 1925) and the subsequent Amendment Acts.
19. The Probation of Offenders Act, 1958.
20. The Public Wakfs (Extension of Limitation) Act, 1959 and the subsequent Amendment Acts.
21. The Wakf (Amendment) Act, 1959 and the subsequent Amendment Acts.
22. The Public Debt (Amendment) Act, 1959.
23. The Married Women's Property (Extension) Act, 1959 and the subsequent Amendment Acts.
24. The Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960.
25. The Hindu Marriages (Validation of Proceedings) Act, 1960.
26. The Children's Act, 1960 and the subsequent Amendment Acts.
27. The Dowry Prohibition Act, 1961 and the subsequent Amendment Acts.
28. The Registration of Births and Deaths Act, 1969.
29. The Foreign Marriage Act, 1969.
30. The Untouchability (Offences) Amendment and Miscellaneous Provisions Act, 1976.
31. The Marriage Laws (Amendment) Act, 1976 and the subsequent Amendment Acts.
32. The Child Marriage Restraint (Amendment) Act, 1978 amending the Child Marriage Restraint Act, 1929.
33. The Anti-Apartheid (United Nations Convention) Act, 1981.
34. The Charitable Endowments (Amendment) Act, 1982 amending the Charitable Endowments Act, 1890.
35. The Hindu Widow's Re-marriage (Repeal) Act, 1983.
36. The Lepers (Delhi, Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Chandigarh (Repeal) Act, 1983.
37. The Juvenile Justice Act, 1986.

38. The Indecent Representation of Women (Prohibition) Act, 1986.
39. The Child Labour (Prohibition and Regulation) Act, 1986.
40. The Muslim Women (Protection of Rights on Divorce) Act, 1986.
41. The Commission of Sati (Prevention) Act, 1987.
42. The Legal Services Authorities Act, 1987.
43. The Parsi Marriage and Divorce (Amendment) Act, 1988.
44. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and the subsequent Amendment Acts.
45. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
46. The Constitution (Scheduled Castes) Orders Amendment Act, 1990.
47. The National Commission for Women Act, 1990.
48. The National Commission for Minorities Act, 1992.
49. The National Commission for Backward Classes Act, 1993.
50. The Consumer Protection (Amendment) Act, 1993.
51. The Protection of Human Rights Act, 1993 and subsequent Amendment Act.
52. The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.
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New Delhi

ISBN 81-200-0385-3